

## HISTORICAL LANDMARKS REGARDING DOMESTIC VIOLENCE IN ROMANIA (1)

PhD Aura PREDA<sup>1</sup>

Spiru Haret University, Bucharest

**Summary:** This study aims to present how the legislation regarding family violence (term according to Romanian legislation) has evolved, from the first law adopted at the beginning of the first decade of the millennium to the beginning of 2024, i.e. over 20 years.

*Some normative acts or articles that mark moments in the implementation process of some EU Directives and/or the Istanbul Convention (using the term domestic violence) will be marked along the way.*

**Keywords:** family violence, domestic violence, legislation, legal framework, temporary protection orders, protection orders, electronic bracelets

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### 1. INTRODUCTORY ASPECTS

In Romanian legislation, it was initially considered that the events that happen within a family are problems related to private life, but at the moment when the scope (quantity) and intensity (murder, attempted murder) of the negative ones exceeded expectations, with effects serious endangering the life, health, safety of the victims (adults and/or children from a family or cohabitation relationship), then the state reacted by adopting normative acts of the nature of severely sanctioning some crimes,

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<sup>1</sup> Faculty of Legal and Administrative Sciences, Bucharest, "Spiru Haret" University, III degree researcher, "Acad. Andrei Rădulescu" Legal Research Institute, Romanian Academy

but also to protect and secure the victims and minor witnesses (recently). The intervention of the statute through coercive, punitive measures can also be argued from the point of view of ensuring the quality of life, as a guarantor of respect for human rights.

Precisely for this reason, we will try to trace the trajectory of these changes aimed at ensuring and restoring balance in the couple, as well as providing protection and multidisciplinary consultation to the victim.

## 2. LEGAL STRUCTURE

To outline the legislative framework for this phenomenon whose real dimensions we never know, we note the following<sup>2</sup>:

- Law 217 of 2003 for the prevention and combating of family violence, republished in 2014 – chapter IV – Protection order
- Law 134 of 2010 on the Code of Civil Procedure, republished
- Law no. 286 of July 17, 2009 regarding the Criminal Code, with subsequent amendments and additions
- Law no. 135 /2010 on the Criminal Procedure Code, with subsequent amendments and additions
- Constitution of Romania, Chapter II, Fundamental rights and freedoms, art. 22
- Law 25/2012 LAW no. 25 of March 9, 2012 regarding the amendment and completion of Law no. 217/2003 for the prevention and combating of family violence.

- When we talk about family violence, we have in mind, from the point of view of legislation, first of all, the Criminal Code<sup>3</sup> and the Criminal Procedure Code<sup>4</sup> each of these amended after February 2014, the date of entry into force of both. Regarding the Criminal Code, the special part, we list the crimes related to family violence: murder (art. 188-189 CC), attempted murder (art. 188-189 CC), beatings and other violence (art. 193 CC), injury bodily harm (art. 194 of the Criminal Code), blows or injuries causing death (art. 195 of the Criminal Code), bodily injury due to negligence (art. 196 of the Criminal Code), ill treatment of minors (art. 197 of the Criminal Code), killing or harming a newborn committed by to the mother (art.200PC), termination of pregnancy (art.201PC), harming the

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<sup>2</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/136108>

<sup>3</sup> Lege nr. 286/2009,  
<https://lege5.ro/Gratuit/gezdmnrzgi/codul-penal-din-2009>

<sup>4</sup> Legea nr. 135/2010,  
<https://lege5.ro/Gratuit/geztkobvha/codul-de-procedura-penala-din-2010>

fetus (art.202PC), illegal deprivation of liberty (art.205PC), threat (art.206PC), blackmail ( art.207), harassment (art.208 CC), human trafficking (art.220 CC), trafficking of minors (art.221 CC), subjection to forced or compulsory labor (art.212 CC), pimping (art.213 CP), begging (art.), exploiting begging (art. 214), using a minor for begging (art. 215 CP), rape (art. 218 CP), sexual assault (art. 219 CP), sexual act with a minor (art.220CP), sexual corruption of a minor (art.221CP), sexual harassment (art.223 CP), domestic violence (art.224 CP), violation of private life (art. 226 CC), Violation of the secrecy of correspondence (art. 302 CC), Illegal access to a computer system (art. 360 CC), child pornography (art. 374 CC), bigamy (art. 376 CC), non-compliance with the measures regarding the custody of the minor ( art. 379 of the Civil Code), preventing access to compulsory general education (art. 380 of the Civil Code). This generous framework is completed with offenses provided for in Law no. 217/2003 on the prevention and combating of family violence. We note that most of these crimes are grouped in Title I - Offenses against the person (art. 188-227), according to the following chapters:

Chapter I - Crimes against life, Chapter II - Crimes against bodily integrity or health, Chapter III - Crimes committed against a family member, Chapter IV - Aggression against the fetus, Chapter V - Crimes regarding the obligation to assist those in danger, Chapter VI - Crimes against personal freedom, Chapter VII - Trafficking and exploitation of vulnerable people, Chapter VIII - Crimes against sexual freedom and integrity. Chapter IX - Crimes affecting the home and private life. We nod. III the provisions of art 199, with the two paragraphs that refer to some articles listed previously. (1) If the facts provided in art. 188, art. 189 and art. 193-195 are committed against a family member, the special maximum of the punishment provided by the law is increased by a fourth. (2) In the case of the crimes provided for in art. 193 and art. 196 committed against a family member, the criminal action can also be initiated ex officio. Reconciliation removes criminal liability. Therefore, the first paragraph supplements the criminal sanction, precisely to act as a lever for general prevention.

At the same time, recent normative acts such as law no. 424 of December 29, 2023 regarding the amendment and completion of Law no. 217/2003 for the amendment and completion of Law no. 286/2009 regarding the Criminal Code, of Law no. 135/2010 regarding the Criminal Procedure Code, as well as the Audiovisual Law no. 504/2002.

If we refer to the Criminal Procedure Code, we note art. 79 which defines the injured person as the person who suffered a physical, material or moral injury through the criminal act.<sup>5</sup> Further, according to art. 81, entitled The rights of the injured person, the set of these rights is presented, provided for in paragraph (1):

- a) the right to be informed about his rights;
- b) the right to propose the administration of evidence by judicial bodies, to raise exceptions and to make conclusions;
- c) the right to make any other requests related to the resolution of the criminal side of the case;
- d) the right to be informed, within a reasonable time, about the stage of the criminal investigation, upon his express request, on the condition that he indicates an address on the territory of Romania, an e-mail or e-mail address, to which this information to be communicated to him;
- e) the right to consult the file, under the law;
- f) the right to be heard;
- g) the right to address questions to the defendant, witnesses and experts;
- g<sup>1</sup>) the right to benefit from an interpreter free of charge when he does not understand, does not express himself well or cannot communicate in Romanian. In urgent cases, technical means of communication can be used, if it is judged that this is necessary and that it does not prevent the exercise of the injured person's rights;
- g<sup>2</sup>) the right to be notified of the translation in a language he understands of any decision not to send him to court, when he does not understand the Romanian language;
- h) the right to be assisted by a lawyer or represented;
- i) the right to appeal to a mediator, in cases permitted by law;
- j) other rights provided by law.

(2) The person who suffered a physical, material or moral injury through a criminal act for which the criminal action is initiated ex officio and who does not want to participate in the criminal process must notify the judicial body about this, which, if it appreciates necessary, he will be able to hear her as a witness.

The most important normative act is Law no. 217/2003 on the prevention and combating of family violence. This law was substantially

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<sup>5</sup> <https://lege5.ro/Gratuit/geztkobvha/art-79-persoana-vatamata-codul-de-procedura-penala?dp=gqztimbzgg3te>

modified by another normative act: Law no. 25/2012 which regulates several aspects such as:

- a definition of family violence consisting of action or inaction
- the 8 forms of violence and brief explanations of their content
- what is meant by family member
- the rights of the victim
- about the attributions of the central and local public administration authorities, as well as of the ministries and other specialized central bodies of the public administration, through their territorial structures, in this matter
- the 5 types of units for preventing and combating domestic violence (art. 23)

Regarding the rights of the victim, a comparison with the rights of the injured person in the criminal process is pertinent and indicated. We consider art. 2<sup>3</sup> of the new law, newly introduced, which has the following content: The victim of domestic violence has the right: a) to respect for his personality, dignity and private life; b) to information regarding the exercise of his rights; c) to protection special, appropriate to his situation and needs; d) to counseling, rehabilitation, social reintegration services, as well as to free medical assistance, under the conditions of this law; e) to free counseling and legal assistance, under the conditions of the law."

At the same time, the most important tool that the legislator puts at the disposal of the direct and indirect victims is the protection order issued by the judge, on which occasion he can temporarily dispose of one or more of the following measures - obligations or prohibitions:

- a) temporary eviction of the aggressor from the family home, regardless of whether he is the owner of the property right;
- b) reintegration of the victim and, as the case may be, the children, into the family home;
- c) limiting the aggressor's right to use only a part of the common home when it can be shared in such a way that the aggressor does not come into contact with the victim;
- d) obliging the aggressor to keep a certain minimum distance from the victim, from her children or from her other relatives or from the residence, workplace or educational unit of the protected person;
- e) the prohibition for the aggressor to move to certain localities or determined areas that the protected person frequents or visits periodically;
- f) prohibition of any contact, including telephone, correspondence or in any other way, with the victim;

- g) obliging the aggressor to hand over the possessed weapons to the police;
- h) entrusting minor children or establishing their residence.

According to paragraph (2) By the same decision, the court can also order that the aggressor bear the rent and/or maintenance for the temporary home where the victim, minor children or other family members live or will live due to the impossibility of staying in the family home. (3) In addition to any of the measures ordered according to para. (1), the court may also order the aggressor to undergo psychological counseling, psychotherapy or may recommend the taking of control measures, treatment or forms of care, especially for the purpose of detoxification.

Aspects related to the duration of this order, about who can submit the application to obtain this order, which are the evidences that can be administered (very quickly), legal assistance and representation, the powers of the prosecutor, the deadlines for pronouncement, postponement of the pronouncement, are further regulated. of motivation and appeal, very short and these, measures that aim to immediately protect all types of victims and, implicitly, general and special prevention.

Moreover, the legislator also took into account the imminent dangers in which the victims may be and provided that "In case of special emergency, the court can issue the protection order on the same day, ruling on the basis of the request and the documents submitted, without the parties' conclusions."

Other very concise articles follow, which have the role of simulating the procedure for issuing this order. We consider attributes of the court, respectively of the prosecutor:

Art. 27<sup>6</sup>. - (1) The decision by which the protection order is ordered is only subject to appeal, within 3 days from the pronouncement if the parties were summoned and from the communication, if it was issued without their summons. (2) The Court of Appeal may suspend execution until the hearing of the appeal, but only with the payment of a bond, the amount of which will be determined by it. (3) The appeal is judged with the summons of the parties. (4) The participation of the prosecutor is mandatory.

Likewise, for its implementation, the Romanian Police is actively involved in several aspects, according to the following article:

Art. 27<sup>7</sup>. - (1) The protection order is immediately communicated to the structures of the Romanian Police in whose territorial radius the residence of the victim and the aggressor is located. (2) The protection

order ordering any of the measures provided for in art. 26 para. (1) shall be executed immediately by or, as the case may be, under the supervision of the police. (3) To enforce the protection order, the police officer may enter the family home and any of its annexes, with the consent of the protected person or, in the absence, of another family member. (4) The police bodies have the duty to supervise the manner in which the decision is respected and to notify the criminal investigation body in case of evasion of execution.

Likewise, the sanctions for violating this order are very clearly specified.

Art. 27<sup>8</sup>. - (1) Violation of any of the measures provided for in art. 26 para. (1) and ordered by the protection order constitutes the crime of non-compliance with the court decision and is punishable by imprisonment from one month to one year. Reconciliation of the parties removes criminal liability.

(2) In case of conviction, conditional suspension of the execution of the sentence cannot be ordered.

We believe that the latter provision must be corroborated with articles from Law no. 146/2021 regarding electronic monitoring in the framework of criminal judicial and executive proceedings<sup>6</sup>.

We further note, also to protect the victims, after the expiration of the term for which the Protection Order was issued, pursuant to art. 27<sup>9</sup>. - At the expiration of the duration of the protection measures, the protected person can request a new protection order, if there are indications that, in the absence of the protection measures, his life, physical or mental integrity or freedom would be endangered.

At the same time, the aggressor, in turn, has rights, one of which is provided in art. 27<sup>10</sup>, with the three paragraphs:

(1) The person against whom a measure has been ordered by the protection order for the maximum duration may request the revocation of the order or the replacement of the ordered measure.

(2) Revocation can be ordered if the following conditions are fulfilled, cumulatively: a) the aggressor has complied with the prohibitions or obligations imposed; b) the aggressor has followed psychological counseling, psychotherapy, detoxification treatment or any other form of counseling or therapy that has been established in his charge or which was recommended to him or he respected the safety measures, if such

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<sup>6</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/242354>

measures were taken, according to the law; c) if there are solid indications that the aggressor no longer presents a real danger to the victim of violence or to her family.

(3) The request for revocation is resolved by summoning the parties and the police unit that executed the protection order whose revocation is requested. The participation of the prosecutor is mandatory.

As I showed previously, the legislator protected even the most vulnerable beings who can be both direct and indirect victims, dedicating an article to the best interest of the minor, according to art. 27<sup>11</sup>. If, once the request is settled, the court finds the existence of one of the situations that require the establishment of a special child protection measure, it will immediately notify the local public authority with child protection attributions.

But the special law no. 217/2003 was later amended by normative acts, such as:

- O. G. no. 6 /2015, approved by Law no. 160/2015
- Law no. 272/2015
- Law no. 351/2015
- Law no. 35/2017
- Law no. 174/2018
- Law no. 212/2019
- Law no. 106/2020
- Law no. 146/2021<sup>7</sup> regarding electronic monitoring in the framework of criminal judicial and execution procedures

The first of them modifies only two articles, respectively art. 8 and art. 37, with duties in the elaboration, coordination and application of the Government's strategies and policies in the field of family violence, and on the other hand, regarding the financing or, as the case may be, the co-financing of programs of national interest that aim to prevent and combat family violence, as well as protecting and supporting the family in order to increase its quality of life, from funds allocated from the state budget for this purpose, from external repayable and non-repayable funds, as well as from other resources, under the law

The last three laws also refer to the protection order. Thus, according to Law no. 272/2015, which has a single article, only art. 31 of Law no. 217/2003 in the sense that a copy of the decision by which the request for the issuance of the protection order was ordered is communicated, within a

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<sup>7</sup> <https://legislatie.just.ro/Public/DetaliiDocumentAfis/242354>



maximum of 5 hours from the moment the decision is pronounced, to the structures of the Romanian Police in whose territorial radius the victim's residence is located and/or of the aggressor.

Also in 2015, this law, Law no. 217/2003, was also amended, also through a single article. This time the amendment referred to art. 27 para. (1) from Law no. 217/2003 for the prevention and combating of family violence, with the following content:

"Requests for the issuance of the protection order are judged urgently and, in any case, their resolution cannot exceed a term of 72 hours from the submission of the request. Applications are judged in the council chamber, the participation of the prosecutor being mandatory".

According to law no. 35/2017 regarding the completion of art. 23 of Law no. 217/2003 for the prevention and combating of family violence, the single article intervenes after paragraph (3) of article 23 of Law no. 217/2003 for the prevention and combating of family violence. Therefore, a new paragraph is introduced, paragraph (4), with the following content: "(4) By the same decision, the court can order the taking of a measure to control compliance with the protection order and to prevent its violation, such as: a) obliging the aggressor to appear periodically, at a time interval determined by the court according to the circumstances, to the competent police station with the supervision of compliance with the protection order; b) obliging the aggressor to provide information to the police body regarding the new residence, in the event that through order was ordered to evict him from the family home."<sup>8</sup>

Another law that modifies, this time several articles of Law no. 217/2003 for the prevention and combating of family violence is the **Law no. 174/2018**<sup>9</sup>, being a consequence of the partial transposition of the provisions of art. 9 para. (1) lit. b) and c) and para. (3) lit. a) and b) of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Framework Decision 2001/220/JHA of the Council.

Some changes refer to principles, others to the redefinition of the qualities of people who can commit a type of violence, the resizing of four forms of violence (in order, psychological, physical, social and spiritual),

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<sup>8</sup> <https://www.mmuncii.ro/j33/images/Documente/Legislatie/L35-2017.pdf>

<sup>9</sup> <https://legislatie.just.ro/Public/DetaliuDocumentAfis/202718>

what is meant by a victim, the authorities' attributions<sup>10</sup> in this "vast construction site". I draw attention to the provisions of art. 5 where the persons who can be family members are listed, but in paragraph 2, the most important: children who witness violence are considered victims, so they will benefit from the same protection measures as victimized adults.

Art. 8, amended in turn, brings new attributions to the central structure of ANES, while article 9 refers to the Ministries connected to this phenomenon, and art. 10 is fully dedicated to the duties of the Ministry of Education.

Art. 11 concerns the probation services, subordinated to the Ministry of Justice for the social reintegration activities of those convicted of domestic violence.

Article 13 refers to financial issues, targeting the local budgets of institutions with the responsibilities of counseling and social assistance of individuals. Article 14 includes a new index, 1, which lists the categories of professionals who can be involved in informing and counseling victims of domestic violence. The following article lists and differentiates between several types of regimes in which social services can operate. Therefore, art. 15 shows that (1) Social services for the prevention and combating of domestic violence can be organized in a residential regime, in a day regime or with a continuous program, with or without legal personality, of local or county interest. (2) Social services for the prevention and combating of domestic violence organized in a residential setting, intended for victims of domestic violence, with accommodation for a determined period, are: a) emergency reception centers; b) recovery centers; c) sheltered housing. (3) The social services for the prevention and combating of domestic violence organized during the day are: a) centers for the prevention and combating of domestic violence; b) centers for information services and awareness of the population; c) assistance centers for aggressors. (4) Social services for the prevention and combating of domestic violence with a continuous program are: a) information and counseling services for victims of domestic violence such as a help-line; b) integrated emergency services for victims of sexual violence.

It is very important to underline the fact that (5) Social services intended for aggressors are organized on a daily basis and have as their objective their rehabilitation and social reinsertion, by providing education

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<sup>10</sup> Autoritățile administrației publice centrale și locale

and counseling measures. According to the law, the centers can monitor the treatment of addictions.

Regardless of victim or aggressor, according to paragraph (6) specialized social services for preventing and combating domestic violence are offered free of charge to victims.

ART. 19 regulates in detail in many paragraphs the measures provided for correcting the aggressors. According to paragraph (1) The assistance centers intended for aggressors are social assistance units that operate during the day, with or without legal personality, which ensure their rehabilitation and social reinsertion, educational measures, as well as counseling and family mediation services.

In Article 19, after paragraph (2), two new paragraphs are inserted, paragraphs (3) and (4), with the following content: "(3) The assistance centers intended for aggressors can provide the beneficiaries with outpatient treatment in the case of different types of addictions, at the recommendation of a specialist doctor, (4) Social reintegration activities of criminals convicted of domestic violence crimes may include the use of social services provided within the centers intended for aggressors."

The benefits that can be offered by social services are detailed in the following articles, because art. 2 to capture another way of reporting a domestic violence offense to the authorities. Hotlines are free social services that provide callers with confidential advice on all forms of violence<sup>11</sup>.

Likewise, with regard to safety and protection, the following article provides that 18<sup>^</sup>1 (1) Protected housing is social assistance units organized in a fixed-term residential regime, with or without legal personality, which provide emergency accommodation, care, social assistance, legal and psychological counseling and guidance for victims of domestic violence. In the last paragraph it is mentioned that (2) The address of protected housing is secret to the general public.<sup>12</sup>

The changes continue with article 22, where, after paragraph (2), two new paragraphs are introduced, paragraphs (3) and (4), to special psychological counseling programs for aggressors organized by public or private specialized services."

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<sup>11</sup> <https://mmuncii.ro/j33/images/Documente/Legislatie/L174-2018.pdf>

<sup>12</sup> *Ibidem*

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with the following content:

"(3) In the settlement of divorce cases, in which one of the spouses was found guilty of committing acts of domestic violence, the competent courts may order, ex officio or at the express request made by the other spouse, in the charge of the aggressor, the measure to participate in special psychological counseling programs organized by public or private specialized services.

(4) The Ministry of Labour and Social Justice in collaboration with the Ministry of Health and the Romanian College of Psychologists, through consultation with the Ministry of Justice, elaborates the methodology regarding the way to participate in special psychological counseling programs organized by public or private specialized services."

A large chapter (with seven sections) is dedicated to another type of protection order, namely the provisional protection order that is issued by the police who find that there is an imminent risk that a person's life, physical integrity or freedom will be endangered by - an act of domestic violence. Considering its importance, as well as the need to complete the legislative framework specific to this law, with the other amending normative acts, we propose to continue this approach in another article.

*(To be continued)*



