

HISTORICAL LANDMARKS ABOUT DOMESTIC VIOLENCE REGULATIONS IN ROMANIA (II)

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Abstract : *The present study aims to continue an approach started last year, i.e. to present how the legislation regarding family violence (a term used before the change in the title of the Romanian law) evolved, from the first law adopted at the beginning of the first decade of the millennium until autumn of 2024, i.e. for 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, others were the result of quantitative and qualitative accumulations at the level of this phenomenon, felt as pressures that required legislative changes. We include in this category the efforts of some public authorities, some parliamentarians, but, above all, some NGOs that have been involved for a long time, actively, with positive results in the control and prevention of domestic violence.*

Keywords: history of law, family violence, domestic violence, legal framework, temporary protection orders, protective orders, victimization prevention, electronic monitoring

1. Introductory aspects

As we showed in the previous article, the special law that regulates the issue of domestic violence in Romania is Law no. 217/2003 for the prevention and combating of domestic violence (originally, family violence).

Before the 2000s, it was considered that aggressive, tense events experienced at the level of a family are problems related to private life, that they diminish over time, that they are inherent in life as a couple, in relationships with children, etc., but the moment the scope (quantity) and

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severity (murder, attempted murder) of the negative ones exceeded expectations, with serious effects endangering the life, health, safety of the victims (adults and/or children from a family or cohabitation relationship), then the state reacted by the adoption of normative acts to sanction the perpetrators, initially with aggravating some crimes, but also to protect and secure minor victims and witnesses (recently).

State intervention at the level of this type of private relations, through coercive and punitive measures, can also be argued from the point of view of ensuring the quality of life, and justified as the guarantor of respect for human rights.

So, we can consider that, with the adoption of this law, the paradigm related to the fact that domestic violence is a matter strictly related to the family, privacy, private, where the state should not intervene with clear and prompt regulations, becomes outdated.

We will try to continue tracing the trajectory of these changes aimed at ensuring and restoring balance in the couple, as well as providing protection and multidisciplinary counseling to the victim.

Other Amendments to Law no. 217/2003 for preventing and combating domestic violence (originally family violence)

To continue the analysis of the normative acts that modified or completed the special law, we will list them, it being easier to follow what still needs to be studied.

Therefore, Law no. 217/2003 was amended by the following normative acts:

- 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. 162/2020
- Law no. 233/2020
- Law no. 114/2023
- Law no. 240/2023

Maintaining the chronological approach gives the presentation not only objectivity, but also reflects the direction in which the legislative changes were imposed as a social reaction to the signals "from the field". Since in the previous article I pointed out essential aspects of Law no. 174/2018, we will continue the presentation with Law no. 212/2019 regarding the amendment of para. (1) of art. 30 of Law no. 217/2003 for preventing and combating domestic violence².

This law modifies, as specified in a single article, with the following content: "The decision by which the request for the issuance of the protection order is resolved is only subject to appeal, within 3 days from the pronouncement, if the parties were summoned, and from the communication, if it was given without citing them." So, it is about the appeal regarding the decision regarding the protection order and the term in which it is exercised, for two situations. Thus, the victim is granted an essential right³ which it was deprived of until now, as she will be able to reject the issuance of a protection order by a judge.⁴

Law no. 106/2020 regarding the amendment and completion of Law no. 217/2003 for preventing and combating domestic violence. This law brings substantial changes, namely the definition of domestic violence, amending article 3, with the following text: "domestic violence means any inaction or intentional action of physical, sexual, psychological, economic, social, spiritual or cyber violence, which occurs in the family environment or domestic or between spouses or ex-spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim". It is true that cases of "inaction" are reduced

All forms of domestic violence are also listed, although in art. 4 letter h) cyber violence is complexly defined "online harassment, online messages inciting gender-based hatred, online stalking, online threats, non-consensual publication of information and intimate graphic content, illegal access to intercept communications and private data and any other form of abusive use of information and communication technology through

² <https://legislatie.just.ro/Public/DetaliiDocumentAfis/219727>

³ The Romanian Institute for Human Rights, *Drepturile femeilor, o viață fără violență este dreptul fiecărei femei (Women's Rights, a life without violence is the right of every woman)*, revised ed.II, Publishing House I.R.D.O., Bucharest, 2023, p.61

⁴ The success of this change is due to civil society, namely the ANAIS Association, *ibidem*, p.62

computers, smart mobile phones or other similar devices that use telecommunications or can connect to the Internet and transmit and use social or e-mail platforms, with the aim of making shame, humiliate, frighten, threaten, silence the victim."

The next two articles refer to public institutions. We consider art.8, to which a paragraph with the following content is added: The National Agency for Equal Opportunities between Women and Men ensures coordination together with other ministries in relation to the integration of an equality perspective between women and men in all policies, programs and artificial intelligence research, to avoid the potential risks of technology that perpetuates sexism, gender stereotypes and cyber-violence.

Indeed, ANES is an agency heavily involved in the development of gender policies, to which another complex mandate has been added, aspects difficult to follow/fulfill with reduced staff, no territorial centers, etc.

The other institutions are the ministries that are related to this phenomenon and can contribute to social control and the prevention of domestic violence, especially the cyber one. We consider art. 9 with two paragraphs. The first paragraph referred to the following ministries: "The Ministry of Labor and Social Protection, the Ministry of Internal Affairs, the Ministry of Education and Research, the Ministry of Health and the Ministry of Transport, Infrastructure and Communications develop and disseminate documentary materials on the prevention, causes and consequences of domestic violence."⁵

The third paragraph refers exclusively to the Ministry of Transport, Infrastructure and Communications⁶ which through the coordinating bodies responsible for the prevention, analysis, identification and response to incidents within cyber infrastructures, has the obligation to carry out the necessary steps to develop public awareness campaigns on cyber violence and to provide practical assistance to central and local authorities in the prevention and responding to cyber violence. Together with the institutions provided for in art. 8, the Ministry of Transport, Infrastructure and Communications establishes, promotes and budgets for programs intended for a wide range of users, for digital literacy.

⁵ As were the names of these ministries at that time

⁶ Ibidem

Chronologically, we must point out the amendment of the Criminal Code made in 2020, during the pandemic, amendment made by Law no. 233 which has a unique article, regarding the legal regime of criminal liability, related to acts of domestic violence. It is about art. 199 paragraph 2 which has the following content: "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." Specifically, the law refers to domestic violence embodied in the crimes of hitting and other violence (art. 193)⁷ and bodily injury due to negligence (art. 196).⁸ Let's point out that it is the period when the increased number of domestic violence was reported and publicized, regardless of its forms and related crimes. It should be noted that quite a lot has been written in the specialized literature about the rights and protection of victims.⁹ Another law amending the special law no. 217/2003 is Law no. 162/2020¹⁰ for the modification and completion of normative acts that include provisions regarding the record of persons and identity documents of Romanian citizens. This law brings changes to 3 ordinances and two laws. We will first present aspects related to the special law, then other related elements.

Therefore, through this normative act, relatively recently, the amendment of article 31 of Law no. 217/2003 for the prevention and combating of domestic violence, the first paragraph of which has the following content: (1) A copy of the operative part of the decision by which the request for the issuance of the protection order was ordered is communicated, within a maximum of 5 hours from the moment the decision is pronounced, to the structures To the Romanian Police, in whose territorial radius the residence of the victim and/or the aggressor is located, as well as to the Directorate for the Records of Persons and the Administration of Databases.

This measure aims at a more effective intervention in the protection of the victim, based on a quick communication expressed in terms of hours.

The same law brings another change of interest for the field subject to attention, this time to an ordinance, namely the Government's Emergency

⁷ <https://sintact.ro/legislatie/monitorul-oficial/codul-penal-din-2009-legea-nr-286-2009-16901302/art-193>

⁸ <https://legeaz.net/noul-cod-penal/art-196>

⁹ A. Preda și Mihaela Berindei, *Contemporary landmarks on victims' rights*, Valahia University Law Study, Ed. Bibliotheca, Târgoviște, nr.1/2023, p. 14-25

¹⁰ <https://legislatie.just.ro/Public/DetaliiDocumentAfis/228641>

Ordinance no. 97/2005 regarding the record, domicile, residence and identity documents of Romanian citizens. The change from art. 9 para. (4), lit. c) is amended and will have the following content:

"c) judicial bodies, for the persons against whom the prohibition of the exercise of electoral rights, the prohibition of presence in certain localities, the prohibition of leaving the territory of Romania, the measure of prosecution, the preventive measure of judicial control or that of judicial control on bail or of arrest at domicile, for persons wanted for participation in judicial proceedings, for persons subject to a protection measure ordered by a protection order, as well as for persons placed under prohibition;"¹¹

Therefore, the interest of this article is only on one of the listed categories, namely the one for which a protection order was issued. The next law that must be listed and analyzed is **Law no. 114/2023**¹² regarding the completion of art. 38 para. (1) from law no. 217/2003 to prevent and combat domestic violence, as well as to amend art. 4 para. (1) from law no. 61/1993 regarding the state allowance for children. Obviously, we will refer only to the changes related to law no. 217/2003. Thus, according to this change, the Romanian parliament after letter j) introduces a new letter, lit. k), with the following content:

k) the prohibition for the aggressor to collect the state allowance for children and the approval of its collection by the parent/person to whom/to whom the child was entrusted for raising and educating or with whom his residence was established. the ban is immediately communicated to the county agency for payments and social inspection or to the Bucharest municipality, as the case may be. the allowance is collected by the parent/beneficiary of the protection measure during the validity of the protection order and as long as the child was entrusted to him/her or in the situation where the child has established residence with him/her.

We note that this article protects the child, protecting him from the situation where the aggressor can collect his allowance and use it as he pleases, return it in installments or not at all, use it as a way of pressure, blackmail, coercion, etc. We also note that the duration of this ban coincides with that of the protection order.

¹¹ Ibidem

¹² <https://legislatie.just.ro/Public/DetaliuDocumentAfis/270064>

Law no. 240/2023¹³ regarding the amendment of Law no. 217/2003 on preventing and combating domestic violence also contains a small number of changed articles. Thus, the Romanian Parliament changes art. 39 which now has the following content:

(1) The duration of the measures ordered by the protection order is determined by the judge, without being able to exceed 12 months from the date of issuing the order.

(2) If the decision does not include any mention regarding the duration of the ordered measures, they will produce effects for a period of 12 months from the date of issuing the order.

We note the possibility offered by the legislator to the judge to double the maximum period for which he issues the protection order, from 6 months to 1 year, thus raising the level of protection of the victims

The second amended article is art. 45, only paragraph 3, which has the following content: (3) The appeal is judged with the citation of the parties. This amendment can be combined with the one from Law no. 212/2019, previously presented.

Finally, it is specified that the provisions of art. 42 para. (1)-(4), (6) and (8) apply accordingly.

2. Related normative acts

By "related normative acts" we mean those normative acts that do not modify the special law, but have an impact on the way in which, for example, the application of "electronic bracelets" is monitored. We consider **Law no. 146/2021**¹⁴ regarding electronic monitoring in the framework of criminal judicial and execution procedures, which includes several titles, chapters, implicitly articles with an impact on the area under analysis. Title I refers to Electronic Monitoring in the framework of criminal judicial and enforcement procedures and includes several chapters, of which Chapter I is relevant, which through the General Provisions familiarizes us with the Scope, regulating in paragraph 1:

a) the establishment, organization and operation of the Electronic Monitoring Information System, hereinafter referred to as SIME;

¹³ <https://legislatie.just.ro/Public/DetaliiDocumentAfis/272310>

¹⁴ <https://legislatie.just.ro/Public/DetaliiDocumentAfis/242354>

- b) how to use electronic surveillance devices and how to act in the event of generating alerts;
- c) SIME data protection measures.

From paragraph (2) we note that SIME is used for the purpose of electronic monitoring, in several situations such as:

- a) execution of the measure of judicial control or judicial control on bail, according to Law no. 135/2010 on the Criminal Procedure Code, with subsequent amendments and additions;
- b) execution of the house arrest measure, according to Law no. 135/2010 on the Criminal Procedure Code, with subsequent amendments and additions;
- c) application of the provisional protection order and the protection order, according to Law no. 217/2003 for the prevention and combating of domestic violence, republished.

Chapter II of the same law refers to the Organization and operation of SIME, it contains an important article in our opinion also because initially there were problems with the concrete application of this measure. It is about art. 9 regarding Staff Training Institutions provided for in art. 6 para. (1) have the obligation to ensure, periodically, the professional training of their own staff, regarding the way of operating the SIME components, in the parts that concern them.

Other chapters that should be mentioned, at least enumeratively, are:

- Chapter III entitled How to use electronic surveillance devices, which in Section 1, respectively Use of electronic surveillance devices, through Article 10 which refers to the communication of the supervisory body with the supervised or protected person
- Chapter IV covers the Procedure in case of generating alerts, and the first article, Article 21 specifies the Categories of alerts
- Chapter V refers to Access of the authorities to the location data and the most relevant remains art. 33 because it details the access of the supervisory body and the judicial body to the location data
- Chapter VI concerns the Protection of personal data, and art. 137 specifically presents Rules on the protection of personal data
- Chapter VII and the last, called Transitional and Final Provisions, brings clarifications through art. 38 on the realization of SIME components.

Title II of the same law refers to the modification and completion of some normative acts. Of these, article 42 refers to the Criminal Code, the next to the Criminal Procedure Code, art. 44 of Law no. 253 /2013, and art. 45 to Law no. 254/2013.

Finally, in art. 46 involves a change at the level of a sentence in the special law. The related wording is "In the context of Law no. 217/2003 for the prevention and combating of domestic violence, republished in the Official Gazette of Romania, Part I, no. 948 of October 15, 2020, the phrase "electronic surveillance system" is replaced by the phrase "electronic surveillance device".

A few ideas at the end of this analysis: The methodological norms fixed a gradual application of this law on the territory of Romania, starting with the counties where there were more cases of domestic violence, but the whole country will be covered until the year 2025. However, there are also changes to established order.¹⁵

It should also be mentioned that this law was partially changed by the Emergency Ordinance no. 61/2024 for the amendment and completion of Law no. 146/2021 regarding electronic monitoring in the framework of criminal judicial and executive proceedings¹⁶ with special reference to the European protection order.

In context, we remind that a new European directive was adopted in this area, namely Directive no. 2024/1385/EU on combating violence against women and domestic violence¹⁷ which will generate new legislative changes through the process of transposition into Romanian legislation. The same procedure was generated by the adoption of directive 2012/29/EU, discussed in numerous articles.¹⁸

It is also necessary to emphasize the Government Decision no. 1547/2022¹⁹ for the approval of the National Strategy on the promotion of equal opportunities and treatment between women and men and the

¹⁵ https://www.avocatnet.ro/articol_60478/Oficial-Monitorizarea-agresorilor-prin-br%C4%83%C8%9B%C4%83ri-electronice-se-va-face-din-2024-in-mai-multe-jude%C8%9Be.html

¹⁶ <https://lege5.ro/gratuit/ge2tenruguzti/ordonanta-de-urgenta-nr-61-2024-pentru-modificarea-si-completarea-legii-nr-146-2021-privind-monitorizarea-electronica-in-cadrul-unor-proceduri-judiciare-si-executional-penale>

¹⁷ <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52022PC0105>

¹⁸ A. Preda, *Protecția victimelor criminalității*, Curierul judiciar, 6/2022, Ed. C.H.Beck, p.367-371

¹⁹ <https://legislatie.just.ro/Public/DetaliiDocumentAfis/262994>,

prevention and combating of domestic violence for the period 2022-2027. The strategy is innovative and integrated, it involves abandoning stereotypes, multidisciplinary intervention with responsibility. This involves the involvement of the authorities and NGOs in fields, symmetrical to the 2 pillars, respectively:

- Pillar I - Equality of opportunity and treatment between women and men
- Pillar II - Preventing and combating domestic violence and violence against women

ANES plays an important role, especially with regard to the second pillar²⁰

considerat garantul respectării principiului egalității de șanse între femei și bărbați , precum și al asigurării elaborării și implementării cadrului juridic necesar.

ANES is a specialized body of the central public administration, with legal personality, subordinated to the Ministry of Family, Youth and Equal Opportunities, and the attributions and mode of organization and operation of ANES were regulated by Government Decision no. 177/2006 regarding the functions, organization and operation of ANES.

Conclusion

As can be seen, the legislative framework in the field of domestic violence is very generous, sometimes even reaching over-regulation. The question is and remains whether this normative framework is sufficient to reduce the phenomenon of domestic violence?

If so, then we still wonder why an extended protection order, regulated by **Law No. 26/2024 regarding the extended protection order**²¹

We believe that other solutions are required, such as:

- the need for research institutions with representativeness at the national level (e.g. National Institute of Criminology - Ministry of

²⁰ The responsibilities and mode of organization and operation of ANES were regulated by Government Decision no. 177/2006 regarding the functions, organization and operation of ANES.

²¹ Effectiveness on August 31, 2024

Justice), possibly with territorial structures according to the Courts of Appeal

- ▶ the need to introduce into the Programs of the faculties of Law (license and/or master's degree) and/or INM/IPPA compulsory disciplines — Victimology)²² but also Executorial Law/Penology (A. Preda, 2022)
- ▶ the establishment of specialized Courts, with psychologists specialized in the hearing
- ▶ the collaboration of magistrates with NGOs (recommended in the latest victims' directive, but also by the Lanzarote Convention 25 Oct. 2007)
- ▶ permanent training of specialized personnel who come into contact with different types of victims
- ▶ encouraging the volunteering of students/master's students at DGASPCs/ANA and relevant NGOs
- ▶ encouraging victimological research within the evaluation projects in Criminology and related disciplines, of undergraduate and dissertation works in this field, at the level of the faculties of Law, Psychology, Sociology, Social Work, Theology, Journalism, etc.
- ▶ steps for a new occupational standard in Romania: the profession of victimologist

In context, we would like to mention the Romanian Society of Victimology (founded in 2022) with the aim of carrying out research (annual conferences), publishing volumes, specialized journals reporting quantitative and qualitative aspects regarding different forms of victimization.

²² Cătălin Andrei Popescu- PICCJ, Revista Prolege, nr. 2/2020, p.19, p.24

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