

DOMESTIC VIOLENCE AND FAMILY RELATIONSHIPS. A FEW LEGAL, SOCIAL AND PSYCHOLOGICAL CONSIDERATIONS

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Abstract

Domestic violence is a serious problem (even a criminal offense under Romanian law) that affects a lot of people around the world, has implications in criminal matters, but also in the field of family law, and transcends national law, with implications at the European level as well. We recall here the convictions for the payment of moral damages before ECtHR. In Romania, domestic violence is regulated primarily by Law no. 217/2003 on preventing and combating domestic violence, but there are also some other provisions related to domestic violence in the Civil Code (Law no. 287/2009) and in the Criminal Code (Law no. 286/2009), as well as in other special laws, such as Law no. 272/2004 on protection and promotion of the rights of the child and Law no. 273/2004 regarding the procedure of adoption. At the European level, we can mention Directive 2011/99/EU on the European Protection Order (EPO), a mechanism for the mutual recognition of protection measures of victims of crime, and we will note that, despite the laudable intentions of the EPO Directive, the aim of which is to provide continuous and similar protection of victims when they are moving across Member States, there are many reasons why the EPO remains under-used in practice. Therefore, the chosen topic aims to find an answer to the question of whether the measures to combat domestic violence are sufficient and effective, both those regulated by national legislation and those provided for in international treaties.

Keywords: domestic violence, family relationships, European Protection Order (EPO), Temporary Protection Order (TPO), national jurisprudence, ECtHR jurisprudence.

„In civilized life, domestic hatred usually expresses itself by saying things that would appear quite harmless on paper (...) but in such a voice or at such a moment that they are not far short of a blow in the face.”¹

1. An introduction inspired by Francine Hughes and the „burning bed syndrome”

One of the most famous movies that dealt with domestic violence was „The burning bed” (1984)¹. In fact, it is both a

non-fictional book by Faith McNulty and a 1984 TV movie adaptation that follows Francine Hughes trial for the murder of her husband, following her setting fire to the bed he was sleeping in at their home on March 9, 1977, and thirteen years of physical and sexual domestic abuse. This true story has raised awareness about the important issue

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¹ C.S. Lewis, *The Screwtape letters (The Devil’s letters to his nephew)*, 1942, available at <https://judithwolfe.wp.st-andrews.ac.uk/files/2017/08/Screwtape.pdf>, last consulted on 04.05.2023.

¹ For more details, see https://en.wikipedia.org/wiki/The_Burning_Bed, last consulted on 03.05.2023.

of domestic violence and the legal system's response to it. In this case, the jury returned from deliberation and found Francine not guilty by reason of *temporary insanity*. Francine Hughes stood outside her Michigan home, watching her abusive husband burn. Earlier that night, he had beaten and raped her for the last time, and then she drove herself to the authorities and turned herself in. Those were the facts. But let's see a little bit more about the story behind this story. As a child, Francine watched her alcoholic father abuse her mother, and, when she dropped out of high school to marry, she quickly became a spousal abuse victim, too², with four children and a husband who spent much of their money on alcohol. A nightmarish marriage, marked by physical, verbal and emotional abuse, led Francine to a divorce, but, even after that, the abuse continued, and, worst of all, even in front of their children.

Francine did not know it, but she was about to become a central voice in the women's movement which worked to draw attention to the cases of women who were brutalized by their husbands but were rarely taken seriously by America's justice system. The movement created a system of life-saving shelters, laying the foundation for a modern awareness of domestic violence. The story of Francine Hughes didn't mean that domestic abuse stopped, though. By 1977, the same year that Francine Hughes killed her husband, the FBI had reported that spousal abuse was the United States' most underreported crime³. Cases like Francine

Hughes' helped draw awareness to this issue, and inspire changes in U.S. laws and policies on domestic violence for the better protection of the victims. After she was acquitted due to *temporary insanity*, „burning bed syndrome” became something studied by academics and used as a defense in other cases of women killing their abusers. A decade later, the U.S. Congress passed the *Violence Against Women Act*⁴, which established a national domestic violence hotline, forced all the states and jurisdictions to recognize and enforce victim protection orders, and provided funding for domestic violence training for law enforcement officers, among other provisions. So, domestic violence had been recognized as a major national problem, but, even in 2019, in the U.S., „20 people per minute are physically abused by an intimate partner, and one in four women and one in nine men will be victims of severe physical abuse by an intimate partner during their lifetime”.⁵

However, it is important to note that movies or books can also perpetuate harmful stereotypes and myths about domestic violence, such as the idea that victims are to blame for the abuse or that the abuser is always a man. In recent years, the issue of domestic violence against men has gained increased attention and recognition within the field of jurisprudence and in popular media. In Romania, the legal system recognizes domestic violence against both men and women and provides legal protection for the victims regardless of

² Francine confessed: «I was thinking about all the things that had happened to me (...) all the times he had hurt me (...) how he had hurt the kids (...) I stood still for a moment, hesitating, and a voice urged me on. It whispered, „Do it! Do it! Do it!”». For details, see E. Blackmore, *Francine Hughes Killed Her Abusive Husband and Changed U.S. Views on Domestic Violence*, 21.03.2019, available at <https://www.history.com/news/burning-beds-syndrome-francine-hughes-domestic-abuse>, last consulted on 03.05.2023.

³ *Ibidem*.

⁴ The *Violence Against Women Act* of 1994 is a U.S. federal law signed by President Bill Clinton on September 13. See Office on Violence Against Women, *Legislation and Regulations*, at <https://www.justice.gov/ovw/legislation>, last consulted on 03.05.2023.

⁵ See E. Blackmore, *op. cit.*, *loc. cit.*

gender. But, like in many countries, the societal stigma surrounding male victims of domestic violence remains a significant barrier for many men seeking help. This is often due to the prevalent stereotype that men are supposed to be physically strong and emotionally resilient, and therefore less likely to be victims of domestic violence. On the international level, there is growing recognition of the importance of acknowledging and addressing domestic violence against men. For example, the UN⁶ has highlighted the issue of male victims of domestic violence in its publications, as have several international organizations, such as the World Health Organization (WHO)⁷ and EU⁸.

2. Romanian law on domestic violence

2.1. General considerations and definition

The fight against conjugal (domestic) violence has intensified at the national and

international level amid the enrichment of the legal framework and the media coverage of this challenge in the context of the expansion of jurisprudence in civil and criminal cases with this object. From the perspective of civil law, there is an attempt to delegatize disputes with this object, a sign that the preventive measures of conjugal violence work in practice with regard to the victims or co-victims of these illicit interferences. Of course, the effectiveness of prevention depends essentially on knowing the causes of the aggression and, at the same time, on the role of the victim's behavior in generating it. On the other hand, from the perspective of criminal law, there is a worrying increase in the continuing causes of violence within the family, and between family members within the meaning of art. 177 CP, including high-violence crimes such as murder and qualified murder.⁹

The basic regulation of domestic violence is found in Law no. 217/2003 on preventing and combating domestic

⁶ For example: report from January 21, 2022, *Exploring conflict related sexual violence against men, boys and LGBTI+ people*, available at <https://www.un.org/sexualviolenceinconflict/report/exploring-conflict-related-sexual-violence-against-men-boys-and-lgbti-people/>, last consulted on 03.05.2023; report from December 9, 2019, *Checklist on preventing and addressing conflict-related sexual violence against men and boys*, available at <https://www.un.org/sexualviolenceinconflict/report/checklist-on-preventing-and-addressing-conflict-related-sexual-violence-against-men-and-boys/>, last consulted on 03.05.2023.

⁷ WHO stated that most aggressors are men (*a contrario*, men can also be victims). Both women who experience intimate partner violence and children who are affected, either directly or indirectly, are at a higher risk of developing mental health conditions (the same risk also exists for the men who perpetrate intimate partner violence). WHO contributed to the first Psychiatry Commission on intimate partner violence and mental health, which brought together international experts from a variety of backgrounds (academics, clinicians, and those with lived experience), in order to find some key steps against violence and its consequences (and also to prevent future violence) by „understanding the connections between intimate partner violence and mental health and by „training health care providers in how to look for signs and ask the right questions in the right way“. See <https://www.who.int/news/item/06-10-2022-preventing-intimate-partner-violence-improves-mental-health>, 6 October 2022, last consulted on 03.05.2023.

⁸ See, for example, point (9) from Directive 2011/99/EU of the European Parliament and of the Council, of December 13, 2011, on the European Protection Order (EPO), OJ L 338/2/21.12.2011.

⁹ The same crescendo of serious cases regarding domestic violence was observed in other European countries, such as France, where, for example, between 2020 and 2021, cases of homicide between family members increased by 14%. See *Bilan de plusieurs années d'action contre les violences au sein de la famille*, in *Revue Actualité Juridique Famille*, no. 1/2023 (January), Dalloz Publishing House, p. 15.

violence¹⁰, but also in other special regulations¹¹ related to the institution.

Preventing and combating domestic violence is part of the integrated family protection and support policy and is an important public health issue, according to Law no. 217/2003 [art. 1 para. (2)]. The same law defines *domestic abuse* as „any intentional inaction or action of physical, sexual, psychological, economic, social, spiritual, or cyber 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 abuser lives or has lived with the victim” (art. 3).

Important aspects need to be highlighted. *First of all*, the law recognizes that domestic violence may occur in various types of relationships, including marriage, cohabitation, or familial (domestic) relationships. Moreover, the law also refers to former spouses or former partners, as well as situations in which the abuser lives or does not live with the victim. Therefore, the

criterion proposed by the legislator is not strictly related to the fact that the victim and her abuser live in the same place¹², nor to a person's marital status deriving from or outside marriage (including relationships after divorce), free unions, or partnerships. The only condition that emerges from the law is that acts of domestic violence committed are based on a family relationship or on an assimilated into the family relationship. *Secondly*, the legislator's reference to „any intentional inaction or action of (...) violence that occurs in the family or domestic environment *or between* spouses or former spouses, as well as between current or former partners (...)”, justifies the conclusion that the law also protects when the victims are family members other than spouses or former spouses, partners or former partners, such as ascendants and descendants, brothers and sisters, their children, as well as the persons who became such relatives by adoption, within the meaning of the concept of *family member*, retained by art. 5 para. (1)¹³ from

¹⁰ Republished in the Official Gazette of Romania, Part I, no. 948/15.10.2020.

¹¹ Violence, in all the mentioned forms (see *infra*, point 2.2. **Forms of domestic violence**), is criminalized in various forms in the Romanian Criminal Code, the legislator even allocating special provisions of criminalization such as domestic violence (art. 199) and the killing or injury of the newborn by the mother (art. 200).

¹² See also A.-Gh. Gherasim, *Violența domestică – noțiune și reglementare la nivel internațional și național*, at <https://lex-avocatura.ro/violenta-domestica-notiune-si-reglementare-la-nivel-international-si-national>, last consulted on 15.03.2023. In addition, see CCR dec. no. 264/2017 (Official Gazette of Romania no. 468/22.06.2017) regarding the exception of unconstitutionality of the phrase „in case that they cohabit” from art. 5 letter c) of the Law no. 217/2003 on preventing and combating domestic violence (the version published in Official Gazette of Romania no. 365/13.05.2012). CCR admitted this exception of unconstitutionality and decided that it violated the Romanian constitutional provisions of art. 1, regarding the rule of law, of art. 22, regarding the right to life and to physical and mental integrity, and of art. 26, regarding intimate and private life. Moreover, CCR retained that the Convention of May 11, 2011, of the Council of Europe on preventing and combating violence against women and domestic violence, ratified by Romania through Law no. 30/2016, represents a genuine treaty on human rights, and art. 3 letter b) of it provides that „domestic violence” means all acts of physical, sexual, psychological, or economic violence that occur in the family or domestic environment or between former or current spouses or partners, „regardless of whether the aggressor shares or shared the same domicile with the victim”. Therefore, the Court observed that the cohabitation requirement — imposed by the provisions of art. 5 letter c) of the Law no. 217/2003 to people who have established relationships similar to those between spouses or parents and children, in order to be able to issue a PO —, contains an inconsistency, in the meaning of art. 20 para. (2) of the Romanian Constitution, between the internal law and a treaty regarding fundamental human rights. Since the domestic law does not contain more favorable provisions, the provisions of art. 20 para. (2) of the Romanian Constitution enshrine the priority of the international regulation, in this case, the Convention of May 11, above mentioned.

¹³ See *infra*, point 2.3. **Subjects of domestic violence**.

Law no. 217/2003 and, with almost the same content, by art. 177 CP¹⁴.

Romanian family law also addresses domestic violence, particularly in the context of adoption or divorce proceedings, but also regarding the exercise of parental authority. Thus, according to art. 508 CC¹⁵, the court may decide that the parent may be deprived of parental rights if he or she endangers the life, health, or development of the child through ill-treatment, abuse of alcohol or narcotics, abusive behavior, gross negligence in the exercise of his parental obligations or rights, or by serious harm to the principle of the best interests of the child. In the domain of adoption, the law¹⁶ provides that it cannot adopt a person who has been convicted of an intentional crime against human beings or against the family, as well as a person who has been deprived of parental rights. The impediment also relates to the situation in which a person wishes to adopt himself or herself and his or her spouse is in one of the aforementioned situations. According to art. 37 para. (7) of the Law no. 272/2004 on the protection and promotion of child rights¹⁷, among the serious reasons that can be taken into account by the judge in order to decide the exercise of parental authority only by one of the parents, there can be retained also the violence against the child or against the other parent, the convictions for violent

crimes, and any other reason related to the risks for the child that would derive from the exercise by that parent of parental authority. Moreover, art. 21 of the same law provides some criteria that could be taken into account when the judge determines the child's place to live after divorce, based on his or her best interests, and these criteria include the history of parental violence against the child or against other persons.

The family, in the broader meaning of the concept, is protected at the criminal level and by other provisions of the Criminal Code, such as the offenses contained in Chapter II (offenses against the family) of Title VIII (art. 376-380 on bigamy, incest, abandonment of the family, non-compliance with the measures regarding the custody of the minor, preventing access to compulsory general education).

2.2. Forms of domestic violence

The forms of domestic violence are regulated by art. 4 para. (1) of Law no. 217/2003, and these refer to:

- *verbal violence* (brutal language, such as the use of insults, threats, and degrading or humiliating words and expressions);
- *psychological abuse*¹⁸ (imposing the will or personal control, provoking states of tension and mental suffering in any way

¹⁴ See Law no. 286/2009, published in the Official Gazette of Romania, Part I, no. 510/24.07.2009.

¹⁵ This does not exempt the parent from his obligation to provide financial support to the child (art. 510 CC). See Law no. 287/2009, republished in the Official Gazette of Romania, Part I, no. 505/15.07.2011.

¹⁶ See Law no. 273/2004 regarding the procedure of adoption, republished in the Official Gazette of Romania, Part I, no. 739/23.09.2016 [art. 7 para. (1)-(3)].

¹⁷ See Law no. 272/2004, republished in the Official Gazette of Romania, Part I, no. 159/05.03.2014.

¹⁸ In a recent case, it was admitted the notification regarding the issuance of a PO and disposed that, for a period of 3 months, the aggressor keeps a minimum distance of 50 m from the victim, and any contact with the victim was forbidden. In opposition to the opinion of the court of first instance, the tribunal found, on the basis of the same evidence, that the aggressor exercised forms of psychological violence against the victim. The aggressor's temperament and the threatening and offensive language used in the messages sent to the victim were likely to cause real fear, tension, and mental distress. Thus, the placement of the victim in an inferior position by the aggressor, the disclosure in public space of the conflict between the two on a social page, and his attempt to crush his dignity are among the reasons for issuing the PO (Bucharest Trib., 3rd civ. s., crim. dec. no. 446/A/21.02.2022, www.rejust.ro).

and/or by any means, by verbal threats, blackmail, demonstrative violence on objects and animals, ostentatious display of weapons, neglect, control of personal life, acts of jealousy, coercion of any kind, unlawful stalking, monitoring of the home, workplace, or other places frequented by the victim, making telephone calls or other types of communications by means of distance transmission, which by frequency, content, or the moment they are made create fear, as well as other actions with similar effects);

- *physical abuse* (personal injury by beating, pushing, knocking down, hair pulling, pricking, cutting, burning, choking, biting, in any form and intensity, including those disguised as the result of accidents, through poisoning, intoxication, and other actions with similar effect, submission to exhausting physical effort or activities with high degree of risk to life or health and physical integrity, other than those established for economic abuse);

- *sexual violence* (sexual aggression, imposing degrading acts, harassment, intimidation, manipulation, brutality in order to have forced sexual relations, rape, including marital rape);

- *economic abuse* (prohibition of professional activity, deprivation of economic means, including deprivation of means of primary existence, such as food, medicines, and first-aid items; intentional theft of the person's goods; 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 to a minor family member; as well as other actions with similar effects);

- *social abuse* (imposing the isolation of the individual from the family, community, and friends; the prohibition of attending the educational institution or the workplace; the prohibition or limitation of professional achievement; the imposition of isolation, including in the common house; the deprivation of access to the living space; the deprivation of identity documents; the intentional deprivation of access to information; as well as other actions with similar effects);

- *spiritual abuse* (underestimating or diminishing the importance of satisfying moral-spiritual needs by banning, limiting, ridiculing, or penalizing the aspirations of family members, the access to cultural, ethnic, linguistic or religious values, prohibiting the right to speak in one's native language and to teach children to speak in their native language, imposing adherence to unacceptable spiritual and religious beliefs and practices, as well as other actions with similar effects or similar repercussions);

- *cyber violence* [online harassment¹⁹, online gender-related hate speech, online stalking, online threats, non-consensual publication of information and intimate graphic content, illegal access (interception) of communications and private data, and any other form of misuse of information technology and communications via computers, smartphones, or other similar devices that use telecommunications or can connect to the Internet and transmit and use social or e-mail platforms for the purpose of

¹⁹ There is an extension of the general incrimination in art. 208 CP on harassment: (1) The act of a person who repeatedly pursues, without right or without legitimate interest, a person or supervises his or her home, job or other places frequented by him, thus causing him a state of fear, shall be punished by imprisonment from 3 to 6 months or by a fine. (2) Making telephone calls or communications by means of remote transmission that, by frequency or content, cause a person fear shall be punished by imprisonment from one month to 3 months or by a fine, if the act does not constitute a more serious crime. (3) The criminal action is set in motion upon the prior complaint of the injured person.”.

embarrassing, humiliating, intimidating, threatening, or silencing the victim].

Para. (2) of art. 4 specifies also that under no circumstances may custom, culture, religion, tradition, or honor be considered as justification for any type of violence defined in this law.

2.3. Subjects of domestic violence. Sanction. Prior complaint

As we have mentioned²⁰, the applicable law regarding domestic violence also provides a definition of the concept of family member. Thus, the response to the question *Who are the subjects of domestic violence?* is given by art. 5 of Law no. 217/2003. According to the law, *family member* means:

a) ascendants and descendants, siblings, their spouses, and children, as well as persons who become relatives by adoption, according to the law;

b) the spouse and/or former spouse; siblings, parents, and children from other relationships of the spouse or former spouse;

c) persons who have established relationships similar to those between spouses or between parents and children, current or former partners, regardless of whether or not they have lived with the abuser, ascendants and descendants of the partner, as well as their siblings;

d) the guardian or another person who exercises in fact or in law rights related to the child;

e) the legal representative or another person who takes care of a person with mental illness, intellectual disability, or physical disability, except for those who fulfill these attributions in the exercise of professional duties.

The law also underlines, in para. (2) of the same art. 5, that *victim* means a natural person who is subjected to one or more of the forms of violence provided in art. 4, including children witnessing such forms of violence.

Art. 199 CP establishes that the criminal offenses of murder, aggravated murder, battery, and other acts of violence or battery leading to death, committed against a family member, are punished more severely, with the maximum limit of these punishments increasing by a quarter.

In the case of family conflicts, the police can act²¹ after a written referral is filed at the police station competent over the territorial area of the victim's home (if it is made by the victim it is called a *complaint*, if it is made by a witness, it is called a *denunciation*), following a telephone call to the service officer of the police station or unit in the respective area or a call to the Single Emergency Call Service 112 (which can be made by anyone aware of such events), a verbal referral made by anyone directly to the police officer patrolling, or the police may find out from the media or during an intervention in a different case. An *ex officio* referral is the way in which the police find out about an offense in any other way than through the victim's complaint. Referrals about acts of domestic violence may also be filed by persons with management positions within a public administration authority or within other public authorities, public institutions, or other legal persons under public law, as well as by any person with control powers who, in the exercise of their powers, has become aware of the commission of an offense for which criminal proceedings are instituted *ex officio*. They are obliged to immediately

²⁰ See *supra*, point 2.1. General considerations and definition.

²¹ See also <https://www.politiaromana.ro/ro/prevenire/violenta-domestica/temporary-protection-order>, last consulted on 04.05.2023.

notify the criminal investigation body and to take measures so that the traces of the offense, the *corpora delicti*, and any other means of evidence do not disappear (art. 291 CPP).

The victims must know that they can refer a *prior complaint* to the criminal investigation body or the prosecutor. This right is personal and belongs to the injured party, but we must retain that the prior complaint may also be lodged by an agent, in which case the power of attorney must be drawn specifically for this purpose and must remain attached to the complaint during the proceedings. The criminal action in cases of offenses punishable upon prior complaint of the injured person, such as battery or other acts of violence (art. 193 CP); threats (art. 206 CP); rape in non-aggravating forms [art. 218 paras. (1) and (2) CP]; sexual assault in non-aggravating forms [art. 219 para. (1) CP]; theft between family members [art. 231 para. (1) CP]; and destruction [art. 253 paras. (1) and (2) CP], is governed by the *principle of availability*: the victim may decide to withdraw the complaint, a situation which extinguishes the criminal action previously initiated. In the case of the offense of battery or other acts of violence committed against a family member, the criminal action may be initiated *ex officio*, and in this case, the victim's will to stop the punishment of the aggressor can no longer be manifested. For

the other categories of offenses (for which the law does not require the lodging of a prior criminal complaint), the criminal investigation bodies do not need the express manifestation of will of the injured person to prosecute the perpetrator, regardless of how they found out about it (complaint, *ex officio*).

We must retain, from art. 289, 295 CPP, that a *prior complaint* shall have a certain form²² and has to be submitted within a certain deadline (within 3 months from the day when the injured person found out about the perpetration of the deed²³).

2.4. Temporary protection order (TPO)

According to art. 28 of Law no. 217/2003, republished, the *TPO*²⁴ is issued by the police agents who, in exercising their professional duties, find that there is an imminent risk that the life, physical integrity, or freedom of a person is endangered by an act of domestic violence.

The police agents establish the *existence of an imminent risk* based on their assessment of the factual situation resulting from the evidence held and the risk assessment form. If, further to the assessment of the factual situation, it is found that the requirements for the issuance of a TPO are not fulfilled, the police agents

²² A prior complaint is addressed to the criminal investigation body or to the prosecutor only by the injured person or by an attorney-in-fact (there should be a limited power of attorney, which shall remain attached to the complaint). If it is made in writing, the complaint has to be signed by the injured person or by the attorney-in-fact. A complaint may also be submitted verbally, and its content shall be recorded in a report written by the person receiving it. A complaint may also be sent electronically, namely by e-mail, but only if it is certified by an electronic signature. Information which shall be included in the complaint: name, first name, personal identification number, quality and domicile of the claimant, description of the fact forming the object of the complaint, indicating the perpetrator, and the means of evidence.

²³ When the injured person is a minor or a major who benefits of judicial counseling or special guardianship, the term of 3 months shall start running from the date when their legal representative found out about the perpetration of the deed. If the perpetrator is the legal representative of the minor or of the incapacitated person, the term of 3 months runs from the date of the appointment of a new legal representative.

²⁴ See also <https://www.politiaromana.ro/ro/prevenire/violenta-domestica/temporary-protection-order>, last consulted on 04.05.2023.

have the obligation to inform the persons stating that they are victims of domestic violence that they have the possibility to file with the court an application for the issuance of a protection order (PO).

A TPO issued by a police agent shall order, for a period of 5 days, one or several *protection measures* (art. 31²⁵ of the above-mentioned law):

- temporary eviction of the aggressor from the common dwelling, irrespective of whether such is the holder of the ownership right thereon;

- reintegration of the victim and, as the case may be, of the children, in the common dwelling;

- ordering the aggressor to keep a determined minimum distance from the victim, from the members of the victim's family, or from the residence, workplace or educational unit of the protected person;

- ordering the aggressor to deliver the weapons held to the police.

A TPO shall also include an indication that the breach of any of the ordered measures constitutes an offense and is punished by imprisonment from one month to one year. If the TPO takes the measure of temporary eviction of the aggressor and their accommodation is not ensured from another source, they shall be informed and guided to the residential centers offering accommodation for homeless people, night shelters managed by the local public administration authorities, or any other adequate place. If the aggressor requests accommodation in a residential center such as those mentioned above, they shall be led

by the mobile team (mobile team: representatives of the social assistance public service).²⁶

The obligations and interdictions ordered against aggressors by the TPOs become mandatory immediately after their issuance, without any summons or lapse of time. The period of 5 days shall be calculated per hours, *i.e.*, 120 hours from the moment when the TPO was issued.²⁷ The TPO shall be communicated to the aggressor and to the victim²⁸ and shall be submitted by the police unit to which the police agent who issued it belongs, for confirmation, to the prosecutor's office attached to the competent local court within whose territorial area it was issued, within 24 hours from its issuance date²⁹. The prosecutor or the competent prosecutor's office decides the need to maintain the protection measures ordered by the police body within 48 hours from the issuance of the TPO. If it finds that it is no longer necessary to maintain the ordered protection measures, the prosecutor may order the termination of the protection measures, supporting such orders with reasons and indicating the time from which they cease. The prosecutor shall communicate this immediately to the police unit that submitted the TPO, which shall take measures to immediately inform the persons who formed the object of such an order.³⁰ If the prosecutor confirms that it is necessary to maintain the protection measures ordered by the police body by the TPO, it shall apply an administrative resolution to its original counterpart. The prosecutor shall then submit the TPO with a term of 5 days,

²⁵ The violation, by the person against whom a TPO has been issued, of any measures provided for in art. 31 para. (1) and ordered by the TPO constitutes an offense and shall be punished by imprisonment from 6 months to 5 years [art. 47 para. (2) from Law no. 217/2003, republished].

²⁶ See art. 31 paras. (4), (5) of Law no. 217/2003, republished.

²⁷ See art. 32 paras. (1), (2) of Law no. 217/2003, republished.

²⁸ See art. 33 para. (1) of Law no. 217/2003, republished.

²⁹ See art. 34 para. (1) of Law no. 217/2003, republished.

³⁰ See art. 34 paras. (3), (5) of Law no. 217/2003, republished.

accompanied by the documents underlying the issuance and confirmation thereof, to the competent local court within whose territorial area it was issued, accompanied by an application for the issuance of the protection order with a maximum term of 6 months. The initial term (of 5 days) for which the TPO was issued shall be extended as of right with the time necessary for the fulfillment of the judicial procedure of issuing the protection order, informing the aggressor of this fact.³¹ The TPO may be appealed to the competent court of law within 48 hours of its communication.³²

2.5. Protection order (PO)

According to the provisions of art. 38 of Law no. 217/2003, republished, *a PO is a judgment issued by a court of law* by which it orders, at the request of a person whose life, physical or mental integrity, or freedom is endangered by an act of violence perpetrated by a family member, one or several of the following measures, obligations, or interdictions, having an interim nature:

- temporary eviction of the aggressor from the family home, irrespective of whether such is the holder of the ownership right thereon;
- reintegration of the victim and, as the case may be, of the children, in the family home;
- limitation of the aggressor's right of use only over a part of the common dwelling when such may be partitioned in such a way that the aggressor does not come in contact with the victim;
- accommodation or placement of the victim, with her consent and, as the case may be, of the children, in a support center;
- ordering the aggressor to keep a

determined minimum distance from the victim, from the members of the victim's family or from the residence, workplace or educational unit of the protected person;

- interdiction for the aggressor to go to certain localities or determined areas that the protected person attends or visits periodically;
- ordering the aggressor to permanently wear an electronic device of surveillance;
- prohibition of any contact, including by telephone, by correspondence, or in any other manner, with the victim;
- ordering the aggressor to deliver the weapons held to the police;
- entrusting minor children or establishing their residence.

By the same judgment, the court may order that the aggressor bear the rent and/or maintenance costs for the temporary dwelling where the victim, the minor children, or other members of the family live or shall live because of the impossibility to stay in the family home. Besides any of the measures listed above, the court may order that the aggressor undergo psychological counseling, psychotherapy and may recommend voluntary or non-voluntary hospitalization. If the aggressor is a consumer of psychoactive substances, the court may order, with their consent, their integration into a support program for drug consumers.

According to art. 44 of Law no. 217/2003, republished, PO is *enforceable*. It is immediately communicated (the term is of a maximum 5 hours) to the structures of the Romanian Police within whose territorial area the victim's and the aggressor's dwelling is located. The PO that orders any of the measures provided under art. 38 shall enforce them immediately, by the police or,

³¹ See art. 34 paras. (4), (6), (7) of Law no. 217/2003, republished.

³² See art. 35 para. (1) of Law no. 217/2003, republished.

as the case may be, under their supervision. Another legal obligation incumbent upon the police consists of the duty to supervise the manner in which the protection order is complied with and to notify the criminal prosecution body in case of avoidance of its enforcement.³³

3. EU law³⁴

Romania is a member state of the European Union and, as such, is subject to the EU's legal framework on domestic violence. The EU has adopted several directives and regulations that aim to prevent and combat domestic violence effectively, including:

The Victims' Rights Directive (Directive 2012/29/EU of the European Parliament and of the Council of October 25, 2012, establishing minimum standards on the rights, support, and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA³⁵) establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States and sets out minimum standards for victims' rights in all EU member states, including the right to access to justice, protection, and support. Member states are required to ensure that victims of domestic violence receive appropriate protection and support, including access to legal aid, medical care, counseling, and emergency services. According to paras. (11) and (13), the Directive lays down minimum rules

(Member States may extend the rights set out in order to provide a higher level of protection) and applies in relation to criminal offenses committed in the Union and to criminal proceedings that take place in the EU. It confers rights on victims of extra-territorial offenses only in relation to criminal proceedings that take place in the EU. A primary consideration in applying this Directive must be the principle of the children's best interests, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, adopted on 20.11.1989. Child victims should be considered and treated as the full bearers of the rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views [para. (14)].

The European Protection Order Regulation allows for the recognition and enforcement of protection orders issued in one member state to be recognized and enforced in another member state. This facilitates the protection of victims who move or travel within the EU. To effectively protect victims of violence and harassment, national authorities often grant them specific measures (restraining, barring, or a similar PO) that help prevent further aggression or re-assault by the offender. If someone has been granted a PO in a Member State and he wishes to continue to benefit from this protection when moving or traveling to another Member State, the EU has put in

³³ The violation, by the person against whom has been issued a PO, of any measures provided for in art. 38 paras. (1), (4) and (5) letters a) and b) and ordered by PO constitutes an offense and shall be punished by imprisonment from 6 months to 5 years [art. 47 para. (1) from Law no. 217/2003, republished].

³⁴ Information taken over from the „*Study on domestic abuse*”, conducted in 2016 by the Crime Research and Prevention Institute, cited by <https://www.politiaromana.ro/ro/prevenire/violenta-domestica/causes-of-domestic-abuse>, last consulted on 08.05.2023, and Camelia Deaconescu, *Cercetare practică violența domestică*, from 06.04.2018, on <https://vdocuments.net/cercetare-practica-violenta-domestica.html>, last consulted on 08.05.2023.

³⁵ OJ L 315/57 from 14.11.2012, at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029>, last consulted on 09.05.2023.

place a mechanism for the mutual recognition of protection measures. National protection measures can be of a civil, criminal, or administrative nature, and their duration, scope and procedures of adoption vary among the Member States. POs orders covered by the Directive and the Regulation concern situations where someone is a victim, or a potential victim, of crime and benefits from a prohibition or regulation of entering certain places or being contacted by or approached by a person causing risk. *Directive 2011/99/EU on the European Protection Order (EPO)*³⁶ sets up a mechanism allowing for the recognition of protection orders issued as a criminal law measure between Member States. If someone benefits from a PO in criminal matters issued in one Member State, he may request an EPO. Protection should be awarded through a new protection measure adopted by the Member State to which he will travel or move, following a simplified and accelerated procedure. However, if someone benefits from a civil law PO issued in the Member State of his residence, he may

use *Regulation (EU) no. 606/2013 on mutual recognition of protection measures in civil matters*³⁷, which sets up a mechanism allowing for the direct recognition of POs issued as a civil law measure between Member States. Therefore, if someone benefits from a civil law PO issued in the Member State of his residence, he may invoke it directly in other Member States by obtaining a certificate³⁸ and presenting it to the relevant authorities certifying his rights.

4. Domestic violence, a complex phenomenon

4.1. Causes of domestic abuse³⁹

– *Cultural Factors*: the attitudes and social stereotypes that legitimate the dominant role of men⁴⁰ and the subordinated role of women, which have been perpetuated throughout the history of humankind; the perception of the divorce⁴¹; society's acceptance of violence within a couple⁴²; the fact that violence is seen as a form of resolving tensed or conflictual situations⁴³.

³⁶ OJ L 338/2 from 21.12.2011, on <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0099>, last consulted on 02.05.2023.

³⁷ OJ L 181/4 from 29.06.2013, on <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0606>, last consulted on 02.05.2023.

³⁸ OJ L 263/10 from 03.09.2014, on <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0939>, last consulted on 02.05.2023.

³⁹ Information taken over from the *Study on domestic abuse*, conducted in 2016 by the Crime Research and Prevention Institute, cited by <https://www.politiaromana.ro/ro/prevenire/violenta-domestica/causes-of-domestic-abuse>, last consulted on 08.05.2023, and C. Deaconescu, *Cercetare practică violența domestică*, from 06.04.2018, at <https://vdocuments.net/cercetare-practica-violenta-domestica.html>, last consulted on 08.05.2023.

⁴⁰ Thus, the main factor responsible for the manifestation of the phenomenon of domestic abuse is represented by the mentality of the men superiority. It should not be forgotten that in Romania, in particular in the rural environment, the family is still under the control of men, being based on the patriarchal pattern of relationships, in which the man decides and the woman listens to, conforms to, and follows.

⁴¹ A perspective according to which a divorce is the recognition of a failure, mostly a woman's failure, who is responsible for the unity of the family, is still passed on by education.

⁴² Violent family conflicts, in which the woman is a victim, become to a certain extent known within the entourage and within the community where they live, and the lack of reaction of the people around shows indifference or even tacit approval.

⁴³ This may be seen not only at the level of the family or couple, but also at the community level. Violence is used in order to impose one's own vision on divergent aspects. That is why the family of origin, the entourage, the group of friends, and the group of colleagues are as many factors determining an individual's behavior as the modalities of action and resolution of conflicts.

- *Mass media* contributes to keeping violence alive and, without any doubt, it has a role in the rise of aggressiveness. Violence is a form of aggressiveness that is learned, and the easiest form of learning is by imitation, which is why the media plays an essential role (news, television programs, cartoons), and violence is abundant.

- *Social and economic factors:* poverty is one of the most frequently incriminated factors in the appearance and proliferation of domestic violence and determines frustration in a person, which generates, in turn, a negative energy that affects family life; financial dependency of a woman, which exists in many of the cases of domestic abuse, favors the victim's lack of reaction and, thus, she chooses to endure; however, a conclusion that domestic abuse is a characteristic of poor families is wrong without affecting the economic middle or upper classes because this type of behavior is manifest in all environments.

- *Legal Factors:* the cumbersome legal procedures applicable in the case of requesting custody of children, the lack of training of some of the experts from the public institutions – social workers, prosecutors, and psychologists; moreover, the crisis of trust in the legal system may be an aggravating factor of this phenomenon.

- *Political Factors:* the lack of political interest in women's problems in general and domestic abuse in particular; the excessive valorization of the family as private space, by limiting the intervention of the State in the life of a couple; the lack of involvement of women in political life.

Besides these causes, there are several circumstances which determine or favour the occurrence of domestic abuse, such as: *excessive alcohol consumption; partners' jealousy; partners' infidelity; sexual problems of the couple; arguments regarding children*, existence of unwanted children or divergences regarding the

manner of upbringing and educating children; *the woman's desire to become financially independent* - consolidation of woman's status in the family, uncooperating negotiation of her position in the family; *difficulties which make the couple vulnerable* (poverty/depreciation of living standard associated with feelings of failure and frustration; absence of jobs/unemployment associated with feelings of insecurity; stress associated with various unpleasant events, such as loss of job, accident etc.; health condition of one or both partners).

There is a *vicious circle of violence*. Although it all starts with the acceptance of a first act of aggression („*first slap*”), unfortunately, in time, the violent episodes may become more frequent, intense, and more severe. Moreover, the abusive process may start even before the creation of the couple. May be a predisposition, a role learned from childhood, the role of passive victim. Remember the case of Francine Hughes? Persons who unconsciously try to seek in their life partner a model seen in their family of origin, which may be abusive. Other people project an ideal partner in a person they have just met, refusing to see his true personality, living in their own fantasy, and interpreting some of his traits in an idealized manner. Often, the abusing person is forgiven, but, in time, as the frustration rises, the level of tension rises, and the acts of violence become more frequent and severe. The victim's emotional and financial dependency on the aggressor determines, however, that the victim must repress her preservation instincts, find excuses for the aggressor, and remain in this abusive relationship. There are even situations in which the victims may change or adapt her personality in order to no longer incite her life partner to aggressive behaviors and hesitate for a long time before they decide to ask for support or before they effectively

take the decision to exit the dysfunctional relationship. If this happens, it is quite late; there is a tendency to postpone this moment as much as possible. There are also extreme situations, which are less frequent, of *high-risk abusers* who are not characterized by a gradual or phased process of violent behavior within the couple; these cases are very severe from the beginning and often end with hospitalization or even the death of the victim.

4.2. How about a safety plan?

It is not easy to leave a violent relationship. The aggressor⁴⁴ either does not admit how severe his behavior is, or promises to change if he is forgiven and supported by the family. Most of the time, he uses emotional blackmail and blames other people for the current situation in the family. Regardless of the control strategy that the abuser applies, the victim⁴⁵ should know that she has the right to a dignified life and that

there are institutions and NGOs that may help her solve the crisis. There are available resources for abused and beaten women, including shelters, training centers for specialization in a profession, legal services, and child care. By staying and continuing to accept repeated abuses, hoping that he would eventually realize that he was wrong and change, the victim consolidates his conviction that he may do more. The victim's patience contributes, in fact, to the perpetuation of the problem. Even if the abuser attends psychological counseling, there is no guarantee that he will change. After hours of therapy imposed by the victim or by a judge, many abusers continue to be violent. Regardless of whether the victim decides to stay or leave the abusive partner, there are several measures that may confer on her a higher level of personal safety. Here are some *recommendations*⁴⁶ made by the *Romanian Police and the representatives of the „Necuvinte” Association*⁴⁷: be prepared for emergency situations⁴⁸, make an escape

⁴⁴ Abusers are often described as having low self-esteem, excessive jealousy, aggressive and hostile personalities, low communication skills, low social skills, an intense need for power or feelings of incapacity, anxiety or a strong fear of abandonment, narcissistic personalities, egoism, etc. Most of the time, people who are violent at home seem not to be aware or responsible for their actions or have unbalanced personalities; they cannot manage their anger or nervous breakdowns. However, except for pathological cases, aggressors are normal people from a mental standpoint who are to be found in all social categories without essential distinctions in terms of education or social status. The aggressor's attitude is characterized by: *minimizing responsibility for their own behavior; transfer of responsibility for the act of violence to the partner; transfer of responsibility to other persons or situations that negatively influenced the cohabitation with the partner*: her parents, her siblings or other relatives, her friends; the poverty, unemployment, etc. See *Study of domestic abuse, op. cit., loc. cit.*

⁴⁵ Victims (most of them women) learn that violence is outside their control or that it is normal, and, thus, they become depressed and incapable of helping themselves. Which is specific to a victim of domestic violence is the material or emotional dependency on the aggressor, internalizing traditional mentalities regarding the woman's role within a couple, as well as the presence of personality traits predisposing her to such victimization (mental fragility, self-blaming tendency, docility, obedience, anxiety, conformism, irascibility; they may be persons without initiative or they may lack objective perception of reality). See *Study of domestic abuse, op. cit., loc. cit.*

⁴⁶ See <https://www.politiaromana.ro/ro/prevenire/violenta-domestica/temporary-protection-order>, and, for the Romanian version, <https://www.necuvinte.ro/cere-ajutor/planul-de-siguranta/>, last consulted on 08.05.2023.

⁴⁷ „Necuvinte” Association is a Romanian non-governmental organization (NGO), created in 2013 in order to combat discrimination, abuse, and gender-based violence. See, for details, <https://www.necuvinte.ro/mission-vision/?lang=en>, last consulted on 08.05.2023.

⁴⁸ The victim must be aware of the signs triggering the abuse and use any reason to get away from the abuser and get out of the house. Moreover, the victim must identify the safe areas of the house where she takes refuge (it's better to avoid small spaces, spaces without escape, or rooms with potential weapons – like the kitchen, and, if possible, choose a room with a telephone and an exit room or a window) and set a code (word, phrase, or signal) by which the victim's friends or neighbors know about the danger, so that they call the police for help.

plan⁴⁹, get another mobile telephone⁵⁰, communicate safely on the internet⁵¹, protect yourself against GPS supervision and recording devices⁵², keep your location secret⁵³, ask for help by calling 112!

4.3. Consequences of domestic abuse in general and their effects on children in particular

Domestic abuse impacts the *physical and mental health conditions* of the victims, their *professional life*, their *economic status*, and their *social relationships*. The victim may suffer injuries that require medical care, as well as temporary or permanent emotional disorders (acute or chronic depression, phobias, post-traumatic stress, panic attacks, anxiety, insomnia), personality disorders, and, sometimes, behavior disorders, food disorders, and even suicide attempts. Regarding the professional and economic status, the aggressor may prohibit the victims from taking a job, or if they already have a job, they may find it difficult to

maintain it because of repeated medical leaves after the aggressions suffered. From a social point of view, the victims are radically or gradually isolated from their family, group of friends, colleagues, and social support services. The aggressor prohibits the victim from keeping in touch with the world outside the home, threatens her, has crises of jealousy, and beats the victim if she does not submit to the interdictions invented by the aggressor. The social isolation of the victim is one of the most serious drivers of failure in the woman's attempt to exit such dependency.

Family violence is the main cause of pre-delinquent behaviors in minor children (running away from home, leaving school, vagabondage), which is a first step towards delinquency in the form of theft, robbery, drug consumption and trafficking etc. Most of the children who were sexually abused within their families became abusers, continuing the cycle of violence. Children are always affected by abuse against their mother and may become, in turn, victims of

⁴⁹ The victim must be prepared to leave the house in case of need, keep a spare key of the car for herself, a minimum amount of money for emergencies, clothes, important telephone numbers, and her identity documents and the children's identity documents hidden in a safe place (e.g., in a friend's house), and try to memorize a list of emergency contacts and ask several persons that she trust if she may contact them in case of need.

⁵⁰ When the victim looks for help against the abuser, it is important that she: covers the traces, especially when using the telephone or the computer; uses a prepaid telephone sim card; verifies the settings of her mobile telephone – there are mobile telephone technologies that the aggressor may use in order to listen to her calls or in order to track where she is, so it's better that the victim close the telephone when she is not using it or no longer take it with her when she is running away from the aggressor.

⁵¹ Many times, the aggressors monitor the activities of their partners, including the use of the computer. While there are means to delete the internet browsing history, it is nearly impossible to delete all evidence from the computer, the history of visited sites, etc., if the victim doesn't know a lot about computers. It is most safe to use a computer outside the house (e.g., at work place, at the house of a friend, or at the library). Also, the victim must consider creating a new e-mail account not known to the aggressor, using new user names and passwords, changing the passwords of the online banking services, and choosing passwords that the aggressor may not guess (not birthdays, nicknames, or other personal information).

⁵² The aggressor may use hidden cameras, such as „Nanny Cam”, or even a baby monitor in order to monitor the victim. The GPS devices may be hidden in the car, bag or other items that the victim carries. The aggressor may also use the GPS system of the car in order to see where the victim has been.

⁵³ It is better that the victim not list the telephone number and, for invoices and correspondence, use a post office box rather than her home address. Also, it is safer to cancel the former bank accounts and credit cards, especially if they were joint accounts with the aggressor, and to use another bank for opening new accounts; to change the daily routine, to use another route to get to work, to avoid places where they used to go together with the aggressor and to always keep a charged mobile phone all the time in case of emergencies.

the aggressor, who, in most cases, is their biological father or stepfather. So, there is for sure a link between acts of abuse suffered in childhood and the risk of becoming victims/aggressors when growing up (boys face a higher likelihood of becoming aggressors, and girls face a higher likelihood of becoming victims). It is essential that they benefit from support in order to deal with the experience of violence and to understand that a life of terror and abuse is not normal. *Symptoms of children exposed to violence*: sleep disorders and food disorders; bedwetting; speech disorders; behavioral disorders: aggressive behavior towards colleagues, friends, and teachers or passivity to other people's aggressive behavior; depression, anxiety, introversion, fear of abandonment, fear of injuries, and fear of death; learning and socializing difficulties in school; suicidal thoughts or attempts.⁵⁴

5. Romanian and ECtHR jurisprudence

As we have mentioned above in Sections 2.4. and 2.5., the PO is one of the most commonly used legal measures to protect victims of domestic violence, designed to provide a swift and effective response to incidents of domestic violence by granting immediate protection to the victim. However, it is important to note that POs are not always effective in stopping domestic violence. In some cases, perpetrators may continue to harass or harm their victims even after a PO has been

issued. This can occur if the perpetrator ignores the order, if the order is not enforced effectively, or if the victim is not able to report any violation of the order to the authorities. Moreover, POs are not a single solution to domestic violence. Other measures may include counseling and support services for victims, education and training for perpetrators, and more effective prosecution and punishment of domestic violence crimes. It is important that POs are enforced effectively and that victims receive the support and resources they need to stay safe and recover from the trauma of domestic violence.

5.1. Romanian jurisprudence

From the unpublished case-law of the national courts on *high-violence crimes (murder, qualified murder, etc.) against family members* [especially regarding art. 188 para. (1) CP, art. 199 para. (1) CP], we have noted the following relevant decisions:

- constitutes murder the act of the recidivist defendant who, due to jealousy, being in his home, applied to his concubine repeated and high-intensity blows all over his body with fists, legs, and a stick, causing traumatic injuries that led to the slow death of the victim (with whom he also had a minor child, at the time of the act being pregnant, even if the defendant did not know this aspect). It has been shown that living together, assimilated into a marriage, obliges the defendant, at least morally, to care for and show affection for the woman with

⁵⁴ Children raised in families where verbal or physical violence is present learn that, by using violence, you may obtain what you want, impose your standpoint, and make the others listen to you. Men who punish women are shown as real men, who know how to be confident, who do not express their feelings, and who are always listened to and respected. In a family affected by aggressive behaviors, children live in an environment in which their needs for safety and emotional security are deeply altered. Instead of parental authority, such a home hosts terror, which does not educate, does not form a balanced adult, and may stop the normal mental and emotional development of the child. See WAVE study, *Away from Violence: Guidelines for Setting up and Running a Refuge* (2004), pp. 10-14, available at http://files.server.wave-network.org/trainingmanuals/Away_from_Violence_2004_English.pdf, last consulted on 31.04.2023.

whom he lived, and in no case should the defendant apply such brutal treatment to the victim, invoking the excuse of jealousy. These circumstances led the first court to focus on the special maximum of the main penalty provided by the law (16 years and 8 months in prison);⁵⁵

- the act of the defendant who, being drunk, applied repeated blows with a hard body to his wife (the leg with heavy boots with a hard bomb, the noise of strong blows applied to the victim being heard to the house of his neighbors), producing traumatic injuries that led to her death, meets the constituent elements of the crime of murder on a family member, for which the defendant was sentenced to 10 years imprisonment as a result of the benefit of the simplified procedure;⁵⁶

- in another case, it was noted that, being under the influence of alcoholic beverages and against the background of violent behavior with his family, the defendant applied several blows to his wife in various areas of the body, including the head, using the tail of a hard object with which he repaired through the yard, causing them multiple traumatic injuries that eventually led to death three days later, despite emergency surgery;⁵⁷

- in the relevant case-law relating to the crime of simple murder of a family member – parent (mother or father), another judgment held that the act of the defendant who exercised acts of physical aggression on his mother, aged 69, as a result of which she died, it constitutes the crime of murder committed on a family member, for which he was sentenced to 25 years in prison; it was established that the defendant was known to be an excess consumer of alcoholic

beverages, he usually went to his parents' home to ask them for money to buy alcohol and cigarettes and, if they did not have money, the defendant resorted to acts of violence toward his parents, the father - 73 years old and the mother - 69 years old, who were often in a position to leave home, to take refuge at neighbors or to sleep in the field;⁵⁸

- it meets the constituent elements of the crime of attempted murder on a family member, and not the crime of family abandonment, the act of the defendant who abandoned his newly born daughter (aged 4 days) behind a building in Bucharest, next to some garbage bins, in a plastic bag, with the intention of suppressing her life; in this case, the defendant abandoned her 4-day-old minor daughter near some garbage bins, in a bag that made her little visible, on an isolated alley that was clogging and had no access to the boulevard, in the evening, in adverse weather conditions, aspects that could unquestionably prove that the defendant acted with the indirect intention of suppressing the victim's life; it is not relevant that the victim was found, by chance, shortly after being abandoned by a witness, nor that she was subjected to physical violence, the manner in which the defendant acted being sufficient to lead to the child's death;⁵⁹

- on May 1, 2016, while at his common home, the defendant struck his 82-year-old grandmother repeatedly with his fists and legs („he jumped” on his grandmother's head), which suffered injuries that led to death; following that, the defendant was sentenced to 10 years in prison; the intention to kill cannot be judged in the light of the relationship between the

⁵⁵ Bucharest CA, 1st crim. s., dec. no. 576/A/21.04.2015, unpublished.

⁵⁶ Bucharest CA, 1st crim. s., dec. no. 1027/A/28.08.2015, unpublished.

⁵⁷ Ploiești CA, crim. s. and for cases with minors, dec. no. 550/A/08.05.2017, unpublished.

⁵⁸ Bucharest CA, 1st crim. s., dec. no. 988/A/27.07.2015, unpublished.

⁵⁹ Bucharest Trib., 1st crim. s., sent. no. 1788/22.07.2016, unpublished.

author and the victim of the feelings nourished by the defendant for the victim, these being subjective and do not remove his willful character and thus do not constitute a component of the offense examined; however, it indicates the seriousness of the act and can be used for the individualization of the punishment.⁶⁰

5.2. ECtHR jurisprudence

ECtHR has been active in addressing domestic violence cases and has issued several landmark decisions that have influenced the legal frameworks of member states, including Romania. During the past thirteen years, the Court has firmly established that domestic violence can constitute a violation of ECHR; however, the way in which this issue has been contextualized by ECtHR has varied and evolved, namely in terms of which articles of the ECHR have been held to have been violated in such cases.

Case *Jurišić v. Croatia*⁶¹ (no. 2), a recent decision that relates to domestic violence, concerned a woman who had been subjected to domestic violence by her husband and who had sought protection from the Croatian authorities. In this case, the applicant had reported several incidents of domestic violence to the police and obtained a PO against her husband. However, the PO was not enforced effectively, and the applicant continued to experience abuse from her husband. She subsequently filed a complaint with the

Croatian authorities, alleging that they had failed to protect her from domestic violence. ECtHR found that Croatia had violated the applicant's rights under art. 3 ECHR (prohibition of torture and inhuman or degrading treatment) and art. 14 ECHR (prohibition of discrimination). The Court held that Croatia had failed to provide effective protection to the applicant from domestic violence and that the authorities had not taken the necessary measures to prevent further abuse. The Court also found that the applicant had been subjected to discrimination on the grounds of her gender, as the authorities had failed to take her complaints of domestic violence seriously and had not provided her with effective protection. The Court emphasized that the state has a positive obligation to protect victims of domestic violence, regardless of their gender, and that failure to do so can constitute discrimination. This decision is significant in several ways. It reaffirms the positive obligation of states to protect victims of domestic violence and emphasizes the need for effective measures to prevent and punish domestic violence, including criminal sanctions, POs, and support for victims. It also highlights the importance of a coordinated and effective response to domestic violence, involving different agencies and actors, and the need to address the issue of gender discrimination in the context of domestic violence.

Case *M.S. v. Italy*⁶², another recent decision, concerned a woman who had been subjected to domestic violence by her

⁶⁰ Prahova Trib., crim. s., dec. no. 174/22.04.2016, unpublished. On the crime of murder (consumed or attempted) on a family member within the meaning of art. 177 CP, see also: Alba Trib., crim. s., dec. no. 52/17.06.2020, unpublished (the victim was a descendant); Bucharest CA, 1st crim. s., dec. no. 955/A/09.07.2015, unpublished (victims were the concubine of the defendant and her father); Braşov CA, crim. s., dec. no. 311/Ap/11.04.2019, unpublished (victims were the wife and two children).

⁶¹ App. no. 8000/21, final judgment from 07.10.2022, available at <https://hudoc.echr.coe.int/eng?i=001-218132>, last consulted on 09.05.2023.

⁶² App. no. 32715/19, final judgment from 07.10.2022, available at <https://hudoc.echr.coe.int/eng?i=001-218130>, last consulted on 09.05.2023.

partner and who had sought protection from the Italian authorities. The applicant had reported several incidents of domestic violence to the police and obtained a PO against her partner. However, the PO was not enforced effectively, and the applicant continued to experience abuse from her partner. She subsequently filed a complaint with the Italian authorities, alleging that they had failed to protect her from domestic violence. The ECtHR found that Italy had violated the applicant's rights under art. 3 ECHR (prohibition of torture and inhuman or degrading treatment) and art. 14 ECHR (prohibition of discrimination). The Court held that Italy had failed to provide effective protection to the applicant from domestic violence and that the authorities had not taken the necessary measures to prevent further abuse. The Court also found that the applicant had been subjected to discrimination on the grounds of her gender, as the authorities had failed to take her complaints of domestic violence seriously and had not provided her with effective protection.

Case *Volodina v. Russia*⁶³, another valuable addition to the ECtHR case law on domestic violence, reinforces the positive obligations placed upon states to protect victims. The applicant argued before ECtHR that the Russian authorities had violated art. 3 ECHR (due to their failure to protect her from repeated acts of domestic violence and to hold the perpetrator accountable) and also had failed to establish a legislative framework to address domestic violence and to investigate and prosecute her ill-treatment under the existing criminal law provisions. In addition, the applicant argued that the failure of the authorities to put in place

specific measures to combat gender-based discrimination against women constituted a violation of art. 14 ECHR, in conjunction with art. 3. ECtHR also held that, due to the repeated complaints that the applicant had made to the police, the authorities ought to have been aware of the violence to which the applicant had been subjected and of the real and immediate risk that such violence could recur. ECtHR pointed out that measures such as restraining orders or POs are not available in Russian law. The Court stated that the response of the authorities had been „manifestly inadequate” and that the state had failed in its duty to investigate the ill-treatment that the applicant had suffered; therefore, there had been a violation of art. 3 ECHR. In respect of the alleged violation of art. 14, the Court commented that „substantive gender equality can only be achieved with a gender-sensitive interpretation and application of the Convention provisions that takes into account the factual inequalities between women and men and the way they impact women’s lives.” ECtHR held that the evidence submitted by the applicant, along with information from international and domestic sources, was sufficient to establish *prima facie* indications that in Russia, domestic violence affects women disproportionately. However, the authorities had not adopted any legislation that was sufficient to provide protection to women who have been disproportionately affected by domestic violence. ECtHR thus held that there had also been a violation of art. 14, in conjunction with art. 3.

⁶³ App. no. 40419/19, final judgment from 14.12.2021, available at <https://hudoc.echr.coe.int/eng/?i=001-211794>, last consulted on 09.05.2023. See also an interesting analysis of this decision by R.J.A. McQuigg, *The European Court of Human Rights and Domestic Violence: Volodina v. Russia*, in International Human Rights Law Review, 07.05.2021, available at https://brill.com/view/journals/hrlr/10/1/article-p155_155.xml?ebody=full%20html-copy1, last consulted on 09.05.2023.

In the Case *Buturugă v. Romania*⁶⁴, Romania was sentenced by ECtHR to pay moral damages to a woman because the authorities did not respond appropriately to her reports of conjugal violence, a case that highlighted the inefficient management by the Romanian authorities of a domestic violence case in our country. In this case, although the victim of domestic violence has made many efforts to demonstrate the abusive behavior to which she was subjected by her former life partner, her actions have met the indifference of the Romanian authorities. Although the victim asked the Prosecutor's Office attached to the Tulcea Court for an electronic search of the family's computer in order to prove that her partner had abusively consulted her electronic accounts and that he had made copies of his private conversations, the prosecutor's office rejected the victim's request, motivated by the fact that the evidence that could have been thus obtained by search would not be related to the threatening and violent crimes committed by the partner. Thus, ECtHR concluded that the Romanian authorities did not address the criminal investigation into the Commission of a crime of conjugal violence and that, in doing so, no measures were taken appropriate to the seriousness of the facts denounced by the applicant. There has also been no substantive examination of the complaint concerning the violation of electronic mail, which, according to the Court, is closely linked to complaints of striking and other violence. Therefore, there has been an omission in compliance with the positive obligations under art. 3 and 8 ECHR and a violation of these provisions.

Another significant case was *Talpis v. Italy*⁶⁵. E. Talpis suffered years of domestic violence from her alcoholic husband. He attacked her on numerous occasions, causing her injuries, and he also tried to make her have sex with his friends by threatening her with a knife. After E. was hospitalized, she moved into a shelter for three months, but she had to leave due to a lack of space and resources. She tried to tell the authorities about her situation several times, lodged a formal complaint, asking for prompt action to protect her and her children. However, the police did nothing for months and this situation of impunity only caused further acts of violence. One evening in November 2013, E. contacted again the authorities. The police stopped her husband and found that he was in a drunken state, but they allowed him to go home. He went to the house in a rage, attacking E. with a knife. Her 19-year-old son tried to stop him. The husband stabbed the boy, who died of his injuries. E. was also stabbed several times in the chest as she tried to escape, but she survived the attack. ECtHR ruled that the authorities had failed to take steps to protect E. and her son given their knowledge of her husband's violent behavior and the immediate threat he caused. The authorities had also failed to take any steps to investigate her complaints for an excessively long time. By underestimating the seriousness of the domestic violence, the authorities had allowed a situation to develop where it was being carried out with impunity. These failings had been discriminatory, as they were linked to the fact that the violence was being carried out against a woman in the home. Evidence showed that many women in Italy were being murdered by their

⁶⁴ App. no. 56567/15, final judgment from 11.06.2020, available at <https://hudoc.echr.coe.int/eng?i=001-201342>, last consulted on 09.05.2023.

⁶⁵ App. no. 41237/14, final judgment from 18.09.2017, available at <https://hudoc.echr.coe.int/eng?i=001-171994>, last consulted on 09.05.2023.

partners or former partners and that society at large continued to tolerate acts of domestic violence. The Court reiterates that in domestic violence cases perpetrators' rights cannot supersede victims' human rights, and the State has a positive obligation to take preventive operational measures to protect an individual whose life is at risk.⁶⁶

In *Eremia v. Republic of Moldova*⁶⁷, ECtHR found that Moldova had violated the applicant's right to an effective remedy by failing to investigate and prosecute her husband for domestic violence. E's husband, a police officer, had been abusive towards her, often in the presence of their teenage daughters (whose psychological well-being were affected as a result). A PO had been issued against E's husband upon E's first request but was not respected by the husband and was partly revoked on appeal. E filed a criminal complaint and claimed to have been pressured by other police officers to withdraw the complaint. Although a criminal investigation was finally launched and substantive evidence of the husband's guilt was found, the prosecutor suspended the investigation for one year, subject to the condition that the investigation would be reopened if the husband committed another offense during that time on the basis that the husband had committed „a less serious offense” and „did not represent a danger to society.” ECtHR found a violation of art. 3

ECHR in respect of E as the suspension of E's husband's criminal investigation in effect shielded him from criminal liability rather than deterring him from committing further violence against E. The Court concluded that the refusal to speed up the urgent examination of their request for a divorce, the failure to enforce the PO, and the insult of E by suggesting reconciliation since she was „not the first nor the last woman to be beaten up by her husband”, and by suspending the criminal proceedings amounted to „repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman”, thus violating art. 14 ECHR. There was also a violation of art. 8 ECHR in respect of E's daughters regarding their right to respect of private life, including a person's physical and psychological integrity. The Court ordered the State to pay the applicants non-pecuniary damages, cost and expenses.

In Case *Opuz v. Turkey*⁶⁸, ECtHR held that the failure of Turkish authorities to protect the applicant and her mother from repeated acts of domestic violence by the applicant's husband (H.O.) violated their right to be protected from torture and inhuman or degrading treatment under art. 3 ECHR. The Court emphasized the importance of effective protection measures, including POs, in preventing and addressing

⁶⁶ As a result of this decision in Italy, between 2015 and 2018, a series of additional reforms were carried out, including: legal changes to strengthen the rights of victims of domestic violence; life imprisonment for the murder of a spouse or partner; training of police and judges about how to combat domestic and gender-based violence; a wide range of public events and national campaigns to raise awareness of the issue; a 24-hour phone line and specialist support units for victims; and an action plan to combat domestic violence from 2017-2020 with substantial financial resources. Following these reforms, the number of convictions has increased, and the length of criminal proceedings is decreasing. However, the Council of Europe continues to monitor the issue of domestic violence in Italy while further evidence is gathered about the effectiveness of the reforms. See also <https://www.coe.int/en/web/impact-convention-human-rights/-/deadly-attack-on-woman-and-her-son-leads-to-ongoing-reforms-to-combat-domestic-violence>, last consulted on 08.05.2023.

⁶⁷ App. no. 3564/11, final judgment from 28.08.2013, available at <https://hudoc.echr.coe.int/eng?i=001-119968>, last consulted on 09.05.2023. See also https://www.law.cornell.edu/women-and-justice/resource/case_of_eremia_v_the_republic_of_moldova, last consulted on 08.05.2023.

⁶⁸ App. no. 33401/02, final judgment from 09.09.2009, available at <https://hudoc.echr.coe.int/fre?i=001-92945>, last consulted on 09.05.2023.

domestic violence. The victim and her mother were repeatedly abused and threatened by the victim's husband, abuse that was medically documented. The victim's husband and his father were at one point indicted for attempted murder against the two women, but both were acquitted. The abuse continued after the acquittal and eventually resulted in the husband's father killing the victim's mother. The husband's father was tried and convicted for intentional murder, but because he argued provocation and exhibited good behavior during the trial, his sentence was mitigated, and he was released pending an appeal⁶⁹. Taking into consideration regional and international treaties as well as the domestic situation in Turkey, ECtHR held that Turkey violated art. 2 ECHR (the right to life), art. 3 ECHR (the prohibition of torture and inhuman or degrading treatment), and art. 14 ECHR (the prohibition of discrimination), and Turkey was obliged to pay the victim non-pecuniary damages and costs. It held that the Government was liable for not taking action to protect victims of domestic violence. As a result, this was the first time a Court recognized that the failure of states to act against domestic violence was a violation under the Convention. The case concerned alleged incidents of violence, including attempted murder, death threats, harassment, and ongoing physical assault, and occasioning grievous bodily harm towards the applicant and her mother (whom he later shot and killed). This was brought to the attention of the relevant state authorities on numerous occasions; however, prosecutions against H.O. were discontinued because the two women withdrew their complaints. On release, after appealing his conviction, H.O.

again harassed the applicant, leading her to the ECtHR, claiming violations under the convention. Such a judgment was considered ground-breaking in regards to international law on violence against women and the state's responsibility. It recognized that States must take a proactive approach in cases where the violence is serious and must bring criminal proceedings against perpetrators of such violence. More significantly, the Court also acknowledged the extent to which violence against women is an issue of inequality and how this impedes the enjoyment of other rights. This was done through non-European sources, such as General Recommendation no. 19 of the CEDAW Committee which highlighted gender-based violence. Thus, it is hoped that the decision could „make a difference for hundreds of thousands of women victims of domestic violence in Europe.”⁷⁰

6. NGOs and their roles

There are many *NGOs*, both in Romania and in the world, that are actively involved in addressing the issue of domestic violence. These organizations provide a range of services to victims of domestic violence, including counseling, legal advice, and support groups. These NGOs play a critical role in addressing the issue of domestic violence, and their work is essential in supporting victims, raising public awareness, and advocating for policy changes. Their efforts have helped to raise the profile of this issue and have contributed to the growing recognition of domestic violence as a serious problem that requires a comprehensive and coordinated response.

Here are a few examples:

⁶⁹ See https://www.law.cornell.edu/women-and-justice/resource/opuz_v_turkey, last consulted on 08.05.2023.

⁷⁰ See also the essay *Analysis of the ECtHR judgment in Opuz v. Turkey*, 10.11.2020, on https://www.lawteacher.net/free-law-essays/human-rights/analysis-of-the-echr-judgment-in-opuz-v-turkey-6831.php#_ftn23, last consulted on 08.05.2023.

- „Necuvinte” Association⁷¹ is a Romanian NGO from 2013, created in order to combat discrimination, abuse, and gender-based violence. It is a member in four specialized national and European networks (Women Against Violence Europe – WAVE, the VOLUM Federation, the Federation of Non-Governmental Organizations for Social Services – FONSS and „We break the silence about sexual violence”). This organization has taken important steps to pave the way for other organizations. From solid partnerships with public institutions with responsibilities in preventing and combating gender-based violence to the first national campaign and caravan „Broken Wings”, implemented in partnership with the Romanian Police, to the amendment of Law no. 217/2003 and the proposal to amend the Criminal Code, this association maintains its path to profound change in Romanian society.

- *FILIA Center - Women's Association*⁷² was created in 2000 with the aim of developing gender studies at an academic level so that they contribute, through expertise and epistemic authority, to emancipation strategies in Romanian society. This is a feminist NGO that focuses on promoting women's rights and combating violence against women and provides a range of services to victims of domestic violence, including counseling, legal advice, and emergency accommodation.

- *European Women's Lobby*⁷³ (EWL): The EWL is the largest umbrella organization of women's associations in the European Union. The organization works to

promote women's rights and gender equality, including addressing issues related to violence against women.

- *Amnesty International*⁷⁴: is a global human rights organization that works to promote and protect human rights worldwide, including women's rights and addressing violence against women. The organization helps fight abuses of human rights worldwide, bring torturers to justice, change oppressive laws and free people jailed just for voicing their opinion.

- *European Union Agency for Fundamental Rights*⁷⁵ (FRA): The FRA is an EU agency that provides support and expertise to the EU and its Member States on issues related to fundamental human rights.

7. Conclusions

In Romania, domestic violence is a widespread problem, with many cases reported each year. According to statistics from the Public Ministry⁷⁶, in 2021, 1,561 victims of domestic violence in the country were reported (cases judged by the national courts of Romania), 621 of whom were minor children. However, it is important to note that many cases of domestic violence go unreported (and therefore unjudged), so the true number of incidents is likely much higher. In Europe, domestic violence is also a significant problem, with many high-profile cases reported in recent years. For example, in 2018, the case of a French woman named Jacqueline Sauvage⁷⁷ gained international attention after she was sentenced to 10 years in prison for killing her

⁷¹ See <https://www.necuvinte.ro/mission-vision/?lang=en>, last consulted on 20.04.2023.

⁷² See <https://centrulfilia.ro/istoric/>, last consulted on 20.04.2023.

⁷³ See <https://www.womenlobby.org/Mission-vision-values?lang=en>, last consulted on 20.04.2023.

⁷⁴ See <https://www.amnesty.org/en/what-we-do/>, last consulted on 20.04.2023.

⁷⁵ See <https://fra.europa.eu/en>, last consulted on 20.04.2023.

⁷⁶ See https://www.mpublic.ro/sites/default/files/PDF/vf_2021.pdf, last consulted on 07.04.2023.

⁷⁷ See <https://www.france24.com/en/20200729-french-woman-pardoned-for-killing-her-husband-after-years-of-domestic-abuse-dies-at-72>, last consulted on 07.04.2023.

abusive husband. The case sparked a national debate in France about the treatment of domestic violence victims in the justice system. In the world, domestic violence is a pervasive problem that affects millions of people each year. Recent high-profile cases of domestic violence include the case of Sarah Everard⁷⁸, a young woman who was murdered by a police officer in the UK in 2021, and the case of Gabby Petito⁷⁹, a young woman who was found dead after going missing while on a road trip with her partner in the US in 2021. These cases highlight the serious and ongoing problem of domestic violence, both in Romania, Europe, and around the world. It is important that individuals, organizations, and governments continue to work together to raise awareness about this issue, provide support to victims, and take action to prevent and address domestic violence in all its forms.

Domestic violence is a serious violation of human rights that affects millions of individuals worldwide, including in Romania. The country has established legal provisions in both criminal and family law to prevent, intervene in, and sanction domestic violence effectively. Additionally, Romania is subject to EU and ECHR regulations that impose obligations to prevent, investigate, and punish domestic violence effectively. The ECtHR has played a significant role in shaping the legal frameworks of member states, including Romania, by emphasizing the positive obligation of states to protect victims of domestic violence and hold perpetrators accountable. However, there are still challenges to effectively addressing domestic violence, including ensuring that victims have access to support services and protection orders, providing adequate

training to law enforcement and judicial personnel, and addressing cultural attitudes that normalize domestic violence. It is crucial that these challenges are addressed to ensure that victims of domestic violence receive the protection and support they need and that perpetrators are held accountable for their actions.

Domestic violence against men is a real issue, and it's important to acknowledge and address it as well. While the majority of domestic violence victims are women, men can also experience domestic violence, both in heterosexual and same-sex relationships. In Romania, the legal provisions regarding domestic violence apply to both men and women, and the criminal and family law provisions are gender-neutral. This means that any person who experiences domestic violence, regardless of their gender, can benefit from the legal protection and support services available. However, it's important to note that men who experience domestic violence may face additional challenges in seeking help and support, as there can be cultural and social stigma attached to men admitting that they are victims of abuse. This can make it more challenging for men to come forward and report domestic violence or seek support services. It's also worth noting that the dynamics of domestic violence may be different in cases where the victim is a man. For example, the abuse may be more likely to involve emotional or psychological abuse than physical violence, and the perpetrator may be more likely to use control or intimidation tactics than physical force.

De lege ferenda, we ask ourselves the need to create a jurisdiction that will be strictly specialized in the matter of marital (domestic) violence. In France, in December

⁷⁸ See <https://mirror.shorthandstories.com/saraheverard/index.html>, last consulted on 07.04.2023.

⁷⁹ See <https://www.cbsnews.com/news/gabby-petito-brian-laundrie-timeline/>, last consulted on 07.04.2023.

2022, a legislative proposal⁸⁰ was adopted (at first reading) in order to create a jurisdiction specialized in intra-family violence. It provides for the establishment of a specialized tribunal for family violence in each court of appeal, which will include a judge specialized in this type of litigation, who will be assisted by two assessors. The Tribunal is specialized in criminal and civil disputes; in the latter case, it can issue a protection ordinance (*ordinance de protection*). In Romania, there is no court strictly specialized in this respect, as there is (only formal and conceptual) the Tribunal for Minors and the Family and Criminal Sections for Minors and Family in some of

the courts of appeal, which adjudicate cases in the common law procedure. Also, in the case of acts of violence that constitute offenses, there is no special procedure for such disputes in the Criminal Procedure Code, although in the Criminal Code there is a chapter on offenses committed against a family member (Chapter III of Title I – offenses against a person), which criminalizes domestic violence (art. 199), in which an aggravated sanctioning regime is established for classical violent crimes (murder, qualified murder, hitting or other violence, bodily injury, death-giving blows) and the killing or injury of the new-born by the mother (art. 200).

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⁸⁰ See *Vers une juridiction spécialisée en matière de violences conjugales*, in *Revue Actualité Juridique Famille*, no. 1/2023 (January), Dalloz Publishing House, p. 6.

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