

# **AGAIN ABOUT GENDER BASED VIOLENCE IN ROMANIA LEGISLATIVE MODIFICATIONS PROMULGATED ON MARCH 2012**

**Lavinia Mihaela VLĂDILĂ\***

## **Abstract**

*The article continues our last year article, presented in the same conference, on the evolution of the legislation on domestic violence in Spain and in Romania. This new study shall approach only the legislative modifications of the Law No 217/2003 inserted in March 2012 after the shooting at "Perla" Hairdresser in Bucharest, which influenced not only the lives of those involved, but also legislative changes, as an attempt from the Government to offer a better protection for women, who are usually the victims of this type of violence. The present study is dedicated to these new modifications ad their social and legal impact.*

**Keywords:** gender based violence, new regulation, restraining order.

## **I. Introduction.**

Regarding our preoccupation of the past few years in knowing and study the issue of gender based violence we drafted this article. Though in our previous study we have presented the evolution of the Romanian and Spanish regulation after 2000, we have not approached the latest modifications brought to the Law No 217/2003 after the shooting at "Perla" Hairdresser in Bucharest, inserted in March 2012. The present study is dedicated to these new modifications and their social and legal impact, especially the impact on those women subjected to gender based violence.

Despite that in Romania there are few statistics on gender based violence, and the existing ones are not very recent, it has resulted that this plague is one of the most present in Romanian society. According to the Statistical Bulletin on Labor and Social Protection – 2009, presented by the Ministry of Labor, Family and Social Protection<sup>1</sup>, in South-Muntenia Region (formed by Argeș, Călărași, Dâmbovița, Giugiu, Ilomița, Prahova and Teleorman counties) were registered most cases of domestic violence (3262), followed by South-East Region (formed by Buzău, Brăila, Constanța, Galați, Tulcea and Vrancea counties) with 1759 cases, the fewest cases being registered in the Western Region (formed by Arad, Caraș-Severin, Hunedoara and Timișoara counties) with 1109 cases. From another Romanian study called "*National Research on Domestic and Work related Violence*", research conducted in 2003 by the Partnership for Equality Center<sup>2</sup> stated that between 2002-2008, 827.000 women were frequently subjected to acts of domestic violence in one of its many forms, thus:

---

\* Lecturer, PhD, Faculty of Law and Socio-Political Sciences, "Valahia" University of Târgoviște (email: laviniavladila@yahoo.com).

<sup>1</sup> Available on the Ministry of Labor, Family and Social Protection official website: <http://www.mmluncii.ro/pub/imagemanager/images/file/Statistica/Buletin%20statistic/2009/protectiafamiliei2009.pdf>

<sup>2</sup> The information was taken from the study *National Research on Domestic and Work related Violence* published on the Partnership for Equality Center official website: [http://www.cpe.ro/romana/index.php?option=com\\_content&task=view&id=27&Itemid=48](http://www.cpe.ro/romana/index.php?option=com_content&task=view&id=27&Itemid=48) p.132.

The research was conducted by the IMAS – Marketing and Polls in July-August 2003, on a representative sample group: 1800 persons aged 18 and above, from whom 1200 were women and 600 men; 182

- 695.000 women were insulted, threatened or humiliated;
- Over 316.000 women were physically abused and a similar number suffered different abuses resulted in forced restriction of social relations;
- Over 227.000 women had not their personal money or were striped of money without their consent by other family members;
- Over 70.000 women were abused in different ways, including sexually.

This shows that violence against women is a wide spread phenomenon which must be closely researched in order to be fully understood and to find the most adequate regulation, in the conditions of a deficient analysis and research, both from the deciders local and central public administration) as well as from the judicial system.

The analysis of the new regulation is a first important step in the understanding of this phenomenon, in order to evaluate the social and legal impact of the existent legislative modifications and inconsistencies even after they occurred.

## **II. Modifications promulgated on March 2012 of the Law No 217/2003 and their social and legal impact.**

The modifications of March 2012 were the result of a case which tends to become well known, namely the shooting at “*Perla*” Hairdresser in Bucharest. In this case, a woman noticed the police in many times regarding the possibility that her husband is trying to murder her, because they were separated and he continuously threatened her with physical violence, and the police did nothing. The silence of the police allowed her husband, who has a firearm license, to come at the victim’s working place – a hairdresser – and, in broad daylight to fire without discrimination in all the persons who were there, employees and customers. The victim and other persons deceased, while others were seriously injured.

A human sacrifice not without result, but totally useless!!! In its aftermath the legislative adopted Law No 2/2012 which modified Law No 217/2003 on domestic violence<sup>3</sup>.

The modifications are very important, but are still uncorrelated with other provisions, and sometimes inefficient. So, in a brief analysis we shall see the novelties brought by the modifications inserted in March in Law No 217/2003.

The concept of “domestic violence”, as defined by Law No 217/2003, on its prevention and combat, is circumscribed, as shown in Art 2 “...any physical or verbal action deliberately perpetrated by a family member against another member of the same family that causes a physical, psychological, sexual suffering or a material prejudice, including threats of such actions, arbitrary coercion or deprivation of freedom”. In our opinion, all these are forms of **direct violence** perpetrated by a family member against other members of that same family. Outside this form, the law states a **form of assimilated violence** namely, “the hindering of the woman to exercise her fundamental rights and liberties”<sup>4</sup>. From this definition were excluded the offences committed by negligence, being contradictory with the opinion of some authors, who include this type of offences in the definition of the concept<sup>5</sup>.

---

representatives with decision attributions in public institutions; 190 experts from local authorities, Police, Institutes of Legal Medicine, generalist doctors, emergency hospitals and NGOs. The PCE promoted this project with the support of the Center for Legal Resources, with funds from the Open Society Institute.

<sup>3</sup> Law No 25/2012 for amending and supplementing Law no. 217/2003 on prevention and control of family violence published in the Official Gazette No. 165 of March 13, 2012.

<sup>4</sup> According to Art 3 Para 2 of the Law No 217/2003 amended.

<sup>5</sup> Ortansa Brezeanu, Aura Constantinescu, *Violența domestică. Reflecții*, in the Romanian Penal Law Review, No 2/2007, p.75.

Also, at a national level, the issue of domestic violence was defined as *a problem of public health*<sup>6</sup>, which made the law to state its solving within the attributions of four (now five) ministries which must collaborate, but have specific roles, in this institutional mechanism: Ministry of Labor, Family and Social Protection, Ministry of Administration and Internal Affairs<sup>7</sup>, Ministry of Public Health, Ministry of Education, Research, Youth and Sport.

In this context, the Ministry of Labor, Family and Social Protection received the attribution to draft the social assistance policy, to promote the rights of the victims of domestic violence, as well as to draft and apply, by its central and territorial specialized structures, special measures to integrate the victims on the labor market<sup>8</sup>. In the actual structure of the Government, the Ministry of Public Health and the Ministry of Administration and Internal Affairs drafts and spreads documentary on the causes and consequences of domestic violence<sup>9</sup>. The Ministry of Education, Research, Youth and Sport implements educational programs for parents and children in order to prevent domestic violence, with the support of other ministries and in collaboration with different NGOs<sup>10</sup>. These attributions cover different sides of the phenomenon: the Ministry of Labor, Family and Social Protection creates the general policy and aims the labor reintegration of the victims; the two ministries, namely the Administration and Internal Affairs and Public Health aim to nationally recognize the cause-effect of the phenomenon by informing the population; the Ministry of Education, Research, Youth and Sport aims to stop from the root this phenomenon, in that after the causes and effects were discovered, the childhood education of citizens, especially in the relation with their parents, shall lead to its substantial diminish. So: application program, victims' integration, information on cause-effects, perseverance in canceling causes. We appreciate that such a vision is auspicious for stopping the phenomenon and healing the wounds it might have caused already.

With these ministries, the law understood to assign attributions also to the *probation service*, which has the possibility to manage the social reintegration of the *persons convicted for domestic violence*, closing the cycle of those involved in the phenomenon<sup>11</sup>.

Another positive aspect of this law is the fact that it states *a series of principles* which should be as a “*bible on domestic violence*” for those who apply the law: principle of equality, principle of respecting human dignity, principle of preventing domestic violence, principle of celerity, principle of equal opportunities and treatment<sup>12</sup>. Even though nowadays human dignity is protected only by civil means (granting compensations in the limits of the Civil Code), other laws are adopted, beside the Constitution<sup>13</sup>, declaring it as a reality which deserves to manifest and to be protected.

The framework for applying the law, according to Art 5, and in the meaning of the special law, refers to:

- *Close relatives*, as defined by Art 149 of the Criminal Code, namely ascendants, descendants, brothers and sisters or their children, as well as the persons who by adoption became such relatives. We can notice that Art 5 Point a) of the law on domestic violence *no longer states the condition that close relatives must live or household with the aggressor*, thus

<sup>6</sup> According to Art 1 Para 2 of the Law No 217/2003 amended.

<sup>7</sup> In the actual governmental structure there are two ministries: Ministry of Administration and Ministry of Internal Affairs. It would be desirable that the attributions be shared by both of them.

<sup>8</sup> According to Art 8 of the Law No 217/2003 amended.

<sup>9</sup> According to Art 9 of the Law No 217/2003 amended.

<sup>10</sup> According to Art 10 of the Law No 217/2003 amended.

<sup>11</sup> According to Art 11 of the Law No 217/2003 amended.

<sup>12</sup> According to Art 2 of the Law No 217/2003 amended.

<sup>13</sup> According to Art 1 Para 3 of the Romanian Constitution revised.

the term “family member” of the special law is broader than the one stated in the actual Criminal Code (Art 5 Point a).

- *Husband/wife*, as well as *ex-husband/ex-wife* (Art 5 Point b)). Adding on the list of persons protected by law or authorities the ex-spouses, expresses the integration of the new ideas on domestic violence and on the persons who can be considered “close”.

- To these categories are added those who have established a relation similar to marriage (*paramours*) or to those between parents and children, if they cohabit (Art 5 Point c)).

- The tutor or other person exerting, de facto or de jure, the rights in the name of the child (Art 5 Point d)). The provision aims to protect the child against violence manifested by his protectors. It is a novelty compared to the previous provision.

- The legal representative or other person who cares for the person mentally ill, with intellectual disability or physical handicap, except those who perform these as professional duties (Art 5 Point e)). It is a new concept that the law integrates showing the legislator’s preoccupation for persons with disabilities against violence that may be provoked not only from blood or civil relatives, but also by those who must take care of them, a premiere in Romania.

A positive aspect of the law is that it encourages NGOs to support the programs for assisting the victims of domestic violence<sup>14</sup>, as well as public-private partnership<sup>15</sup>.

In order to assist the victims of domestic violence, also of the aggressors, the law created 4 types of institutions, called *units for the prevention and combat of domestic violence*, namely: domestic violence shelters (women’s shelters), centers for the rehabilitation of victims of domestic violence, centers for assistance destined to aggressors and domestic violence awareness centers. All these types of units can be founded and sponsored by public or private funds or in a public-private partnership, the institution financing being responsible for spending these funds. Founding these units can be made only by social services providers, accredited according to the law. These units offer free assistance for victims of domestic violence, based on *a contract for performing social services*<sup>16</sup>.

The centers for sheltering victims of domestic violence, further on called shelters, are social assistance units, with or without legal personality, which provide protection, accommodation, attendance and counseling to the victims of domestic violence, forced to resort to this social assistance service. Shelter units offer assistance both for the victim, as well as for the minors in his care, for free and for a determined period protection against the perpetrator, medical care, food, housing, psychological and legal assistance. The location of the shelter units is secret to the public<sup>17</sup>. Beside the shelter units, the law stated the foundation of *recovery centers*, which ensure, in addition to housing and care, social rehabilitation and reinsertion for the victims. The law does not forgot the aggressors, for whom it stated the foundation of assistance centers, created as units of social assistance with or without legal personality working as daycare centers, ensuring social rehabilitation and reinsertion for them, educational, counseling and family mediation measures. For them, the measures of family mediation are supplemented by specific treatment, namely psychiatric or rehab performed in medical units with who were concluded agreements. Regardless of the situation, the assistance and hospitalization of victims or aggressors in the above mentioned units is made only with their consent. For juveniles the consent belongs to the non-violent parent or legal representative<sup>18</sup>.

<sup>14</sup> Ortansa Brezeanu, Aura Constantinescu, *Violența domestică. Reflecții*, in the Romanian Penal Law Review, No 2/2007, p.75.

<sup>15</sup> According to Art 16 Para 1 and 6 of the Law No 217/2003 amended.

<sup>16</sup> According to Art 15-16 of the Law No 217/2003 amended.

<sup>17</sup> According to Art 17 of the Law No 217/2003 amended.

<sup>18</sup> According to Art 16 of the Law No 217/2003 amended.

The fourth type of assistance units are the *domestic violence awareness centers*, providing information and education services, social assistance and an emergency hotline for information and counseling.

The law states *mediation* as a mean of solving domestic conflicts, without being mandatory. In exchange, the law states for convicts for domestic violence to participate in special counseling and social reinsertion programs implemented by the institutions where they are executing their penalties<sup>19</sup>.

Legally, for the first time in our legislation, the law states *the restraining order*, as a mean designed to estrange the victim from the perpetrator and to ease other legal measures, including solving the children's situation, if necessary.

The restraining order can be issued if the victim's life, physical or physical integrity, freedom are endangered by an act of violence from a family member.

It consists in the implementation of one or more measures:

- Temporary evacuation of the perpetrator from the family home, regardless if he is the owner;
- Victim's and his children reintegration in the family home, if they were cast away from the common home;
- Ordering the perpetrator to maintain a minimal distance from the victim, his children or other relatives, his residence, working place or school of the protected person;
- Banning all kind of contact, including by phone, mail or other type with the victim;
- Ordering the perpetrator to hand over the police any weapons he owns, even if are legally owned;
- Entrusting minors or establishing their place of residence elsewhere than the residence where they suffered or witnessed domestic violence;
- Ordering the perpetrator to pay the rent and/or maintenance of the temporary residence where the victim, children or other family members reside, or are about to reside due to the impossibility of remaining in the family home.

The *Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the protection of women against violence*<sup>20</sup> splits these measures in two, the court may order two types of orders: a *restraining order*, which prohibits any contact of the aggressor with his victim for a certain period of time and a *protection order* aiming the other types of measures. Such distinction is necessary only in the hypothesis in which in first allowed to issue the restraining order for the protection of the victim against a possible physical contact with the aggressor, and after that, in a more elaborated procedure, to issue the protection order.

The procedure to issue the protection order should be performed with celerity. The competent court is the first instance tribunal; the procedure has short terms and can be appealed within 3 days from its issuance if the parties were summoned or from the communication, if the parties were not summoned. The prosecutor's presence is mandatory in both trials and also, the aggressor's legal assistance. The order can be issued for a maximum period of 6 months. The protection order is applied by the police and its non-abidance is the offence of non-abidance by court decisions, being sanctioned by imprisonment from one month to one year, for this penalty the conditional suspension not being possible<sup>21</sup>.

<sup>19</sup> According to Art 22 of the Law No 217/2003 amended.

<sup>20</sup> The document is available on the Council of Europe official website: <https://wcd.coe.int/ViewDoc.jsp?id=280915&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

<sup>21</sup> According to Art 23-35 of the Law No 217/2003 amended.

**III. Conclusions and proposals for a new regulation, correlated with a case study.** Although all analyzed legislative modifications were major, they are also subjected to critics and to the need of improvement.

**1.** A first critic brought regards the way in which the texts referring to the Criminal Code are drafted. Due to the scanty legislative technique chosen by the legislator, this law is not considered a special criminal law. It is not even a civil law with criminal provisions<sup>22</sup>, but just another law regarding a social area, tangential with criminal law. This is why it is not reflected in the Criminal Code<sup>23</sup>, being only completed by it. These allegations are not hazardous. In the “*Explicații teoretice ale Codului penal român*” published under the auspices of the Romanian Academy and of its Legal Research Institute, the authors consider that a provision from other law than the Criminal Code, has a penal feature only if it incriminates an offence for which Art 53-54 state a penal sanction or that provision is related to one of the Code, which Law No 217/2003 does not do<sup>24</sup>. In this context, Law No 217/2003, even after the 2012 modifications, must be in accordance with the Criminal Code, as well as with the new Criminal Code, so that such an atypical situation will cease to exist.

**2.** Another critic refers to the fact that even though the law states the offence of domestic violence convicting the aggressor, Law No 217/2003 amended does not state these offences; the previous regulation (before March 2012) stated over 25 offences from the Criminal Code<sup>25</sup>. With the legislator itself withdrawing the listing can we be able to relate to these? In the same context, it must be noticed that the actual Criminal Code does not define the offence of domestic violence nor connects it to a certain offence (in the meaning that there is no title, chapter or section regarding domestic violence or to have a similar name as it is – for example – in the new Criminal Code on 2009). There are only four offences committed with violence, which clearly refer to the subjects of the offence as family members (Art 180 Para 1<sup>1</sup> and 2<sup>1</sup> – hitting or other forms of violence and Art 197 Para 2 Point b) – rape) or to the spouse and close relatives (Art 175 Para 1 Point c) – first degree murder), but according to the definition of domestic violence – offences committed in these situations are many more, the range covered by the previous Art 1 Para 2 being wider. In addition, these four offences have as main object the social relations on

<sup>22</sup> In accordance with the Romanian doctrine, the streams of the criminal law are: Constitution, Criminal Code, special penal laws, civil laws stating penal provisions. Lavinia Vlădilă, Olivian Mastacan, *Drept penal. Partea generală*, Universul Juridic Publishing-House, Bucharest, 2012, pp.33-35.

<sup>23</sup> V. Dongoroz, I. Fodor, S. Kahane, N. Iliescu, I. Oancea, C. Bulai, R. Stănoiu, V. Roșca, *Explicații teoretice ale Codului penal român. Partea specială*, vol. IV, 2<sup>nd</sup> Edition, Romanian Academy Publishing-House and All Beck Publishing-House, Bucharest, 2003, pp.859-861; the authors consider that a provision from a law other than the Criminal Code has penal feature only if it incriminates an offence punishable by a penal sanction, from those stated by Art 53-54 of the Code, or if that provision is expressly connected to one of the Criminal Code, which Law No 217/2003 does not state.

<sup>24</sup> V. Dongoroz, I. Fodor, S. Kahane, N. Iliescu, I. Oancea, C. Bulai, R. Stănoiu, V. Roșca, *Explicații teoretice ale Codului penal român ...*, op. cit., pp.859-861.

<sup>25</sup> Former Art 1 Para 2 of the Law No 217/2003 stated as forms of domestic violence the following types of offences: Art 175 – first degree murder, Art 176 – particularly serious murder, Art 179 – determining or facilitating suicide, Art 180 – hitting or other forms of violence, Art 181 – bodily harm, Art 182 – serious bodily harm, Art 183 – hitting or injury causing death, Art 189 – illegal deprivation of freedom, Art 190 – slavery, Art 191 – subjection to forced or obligatory labor, Art 193 – threat, Art 194 – blackmail, Art 197 – rape, Art 198 – sexual intercourse with a minor, Art 202 [Art 205 – insult and Art 206 – slander – abrogated], Art 211 – robbery, Art 305 – desertion of family, Art 306 – ill treatment applied to minors, Art 307 – non-abidance by measures for child custody, Art 309 – venereal contamination and transmission of the acquired immune deficiency syndrome (AIDS), Art 314 - jeopardizing a person unable to look after him/herself, Art 315 – leaving persons helpless, Art 316 – leaving persons helpless by failure to notify and Art 318 - preventing the freedom of the cults.

the life and physical or psychical integrity or health of the person, and in subsidiary affect family relations, which in the case of a special regulation dedicated to domestic violence, the situation would be reversed.

3. The experience of a case in which I have studied the application of the new provisions on the protection order revealed the existence of other dysfunctions of the actual regulation. According to Art 17 Para 4 of the Law No 217/2003 amended, the state must endorse the setting up of secret centers for sheltering victims of domestic violence. In fact they are the same with the ones used for other social cases and can be found on the websites of the local Directions for Social Assistance and Child Protection or in Bucharest, the information regarding them being public.

4. Knowing the legislation in the area of domestic violence is limited and interpreted in a restrictive manner, without understanding the **urgent need of solving the cases**. Despite Art 27 Para 1 of the analyzed law, the case<sup>26</sup> had in view was delayed for over more than four month (was initiated at the end of August and the solution became irrevocable in mid-January next year), both in first instance and in appeal, which in the terms of a precarious situation of the victim would have made the legal provisions be ineffective. The pressures of the aggressor-defendant, the lack of a support from the state, of specialized free assistance determined the victim to call off the action.

The study "*Protecting women against violence*" published in 2007 under the auspice of the Council of Europe by two teachers from the German University of Osnabrück<sup>27</sup> determined immediate measures, in the so called "golden hours" after the conflict started. But it is necessary that the police are empowered to act, even in the absence of a court decision (for instance, separating the aggressor from the victim, evacuating him from the common house or supporting the victim in finding a shelter which provides psychical counseling). This study offers as a positive example the Austrian situation, which by a law in 2007 incremented the police powers, its actions being independent from the victim's consent, being able to issue a restraining order for maximum 10 days, the police managing the situation for the first three days. Based on the new law, the aggressor must hand over the police the keys from the common residence, and if he is caught violating the restraining order (which assumes his evacuation from the common residence) shall be punished by fine or can be arrested. If the victim allowed him to enter the common residence, she as well can be fined.

5. Despite the fact that Romania informs in some European reports<sup>28</sup> that it has ensured the training of magistrates, policemen, media personnel and social assistants on the phenomenon of domestic violence, in fact just a small number of magistrates enjoyed such training, and the next two categories did not. Regarding the training of magistrates, from our knowledge, it was a local project concluded in 2007, resulted from the cooperation of the American Bar Association with the Ministry of Labor, Social Protection and Family (with its previous name), together with other Romanian partners, which involved as a working group only two judges, two attorneys, one prosecutor and one representative from the National Agency for Family Protection, National Coalition for Domestic Violence and the Ministry of Justice and whose activity included complex seminars in Alba Iulia, Brașov, Bucharest, Craiova, Iași, Ploiești and Timișoara. The trainers in the program were three judges from the Courts of Appeal of Bucharest, Brașov, Iași

<sup>26</sup> The case was trialed by the Târgoviște First Instance Court, File No 7873/315/2012 and the appeal was trialed by the Dâmbovița Tribunal.

<sup>27</sup> Protecting women against violence – Analytical study on the effective implementation of Recommendation Rec (2002)5 on the protection of women against violence in Council of Europe member States, study published in 2007 on the Council of Europe website <http://www.coe.int//equality/>, p.21.

<sup>28</sup> Ibid., Annex of the Table No 16, p.78.

and a prosecutor from the Iași Territorial Office of the Directorate for Investigating Organized Crime and Terrorism<sup>29</sup>. But even so, there still are many professional categories with no training in this area such as: attorneys, medical staff involved in helping the victims, psychologists, teachers in schools, high-schools or universities. Until today in Romania there is not a master degree program dedicated to this subject, and the media, written or audio-video, has not promoted a commercial or a message informing about the dangers, effects and cases of domestic violence, just limited themselves in presenting news, unaccompanied by necessary legal comments. Regarding the police, they still consider the issue of domestic violence a private one, the simple draft of a criminal complaint solving the case from their perspective. Though the Criminal Code states their direct involvement, but just in cases of physical violence<sup>30</sup>, in fact it is expected the “alarm signal” triggered by the victim, which is very rare, or just in extreme cases, when nothing can be done (as the case of the “Perla” Hairdresser in Bucharest).

6. From the medical staff’s perspective, even though they provide immediate medical care for more serious cases for the victims of domestic violence, without discrimination or priority, they are not required to report milder cases (where the victim can file a prior complaint) to the police, social assistants or shelter units to take the victim and offer her specialized assistance, according to her case.

When medics face psychological violence the situation is vaguer, because without a qualification in this area, these cases are treated as usual, and the results are a partial efficiency and the waste of precious time waiting for the problem to be solved. In the case above mentioned, the victim, who requested a protection order against her husband, has been previously treated twice in psychiatry, the doctor recommending “family support” for her emotional state, knowing the fact that her psychic disorder was caused by relationship with her husband. The question was from where should the victim had family support, as long as the relationship with her parents was tensed, she rarely saw her brother to whom she sometimes talked about her family situation, she only had a close friend, and the conditions of her working place did not allow to talk about her family situation? Only her children would have been a real support in this case, but the children who stayed with the husband started with his “help” to detach themselves from their mother unwilling for a relationship with her.

*Thus, even though every possible professional category involved in this type of cases – medics, nurses, social assistants, police, magistrates, attorneys – can act as good professionals in their activity, the lack of coordination between these institutions determining the lack of efficiency in these cases.*

7. From a procedural perspective, in the analyzed case in appeal was raised the issue of the mandatory presence of the defendant and of the plaintiff. In our standpoint, from the correlative interpretation of Art 27 Para 3 and 4 with Art 30 of the Law No 217/2003 amended, legal assistance is mandatory for the defendant only in first instance tribunal, not in appeal, and for the victim the law states the principle of legal assistance. The provisions of the law are interpretable regarding the situation of the defendant, this is why we consider that a clear and general statement – where Art 27 refers to first instance trial, and Art 30 to appeal – would be welcomed. In addition, as shown before, if the victim waved her defender, because she wanted to cease the litigation and filed a motion for withdraw, the appeal court ensured mandatory legal assistance and registering the motion for withdraw established the judicial expenses to be paid

<sup>29</sup> See the Final Report of the Project Domestic Violence in Romania: the law, the court system – American Bar Association, Central European and Eurasian Law Initiative and USAID.

<sup>30</sup> We are talking about the offences stated by Art 180 Para 1<sup>1</sup>, 2<sup>1</sup> and Art 181 Para 1<sup>1</sup> of the Criminal Code, which state the initiation of the criminal proceedings ex officio, not just by the lodging of a prior complaint from the victim.

by the victim, though Art 6 Para 1 Point e) of the Law No 217/2003 states the principle of free legal assistance.

8. Another lack in the law is detailing the mean of allowing and administrating the evidences. The law should expressly state the possibility for the court to admit the interrogation of the parties or witnesses because in the lack of such a provision Art 189 of the former Criminal Procedure Code or Art 315 of the present Criminal Procedure Code is applicable. Due to the nature of the case often such cases are known first in family and sometimes by different friends of the parties. Also, regarding management of such cases the law should state the possibility of hearing the witnesses earlier than a week, in court in order to ensure both the celerity and continuity of the trial.

9. In procedural terms, another inconsistency with the existing legislation is found in the case of admitting the request for protection order, simultaneously with the file for divorce, very possible in these cases. Art 614 of the former Civil Procedure Code, still applicable for cases filed before 15 February 2013, the obligation of the victim to be present in first instance hearings could cause problems in respecting the protection order (because it states the mandatory presence of both parties in first instance hearings). The new provisions of Art 920 mostly reiterate Art 614 and state the representation by attorney without a special order in the four cases above mentioned (imprisonment, a serious illness, placing the plaintiff under interdiction, residing abroad), but does not entirely solve the special case stated by the special legislation on domestic violence. In the absence of an express text, we consider helpful Art 921 of the new Civil Procedure Code stating that the unjustified absence of the plaintiff, in first instance court, correlated with the presence of the defendant, can lead to the rejection of the file for divorce as untenable. Therefore, if the plaintiff (man or woman) can prove that his/her absence is justified by the protection order, the court can continue the hearings in his/her absence, only by legal representative.

10. Ultimately, but not less important, it must be mentioned that in May 2011, in Istanbul, the Council of Europe drafted and subjected for approval and ratification by the Member States a Convention on preventing and combating violence against women and domestic violence. Until today, Romania has not signed or ratified this Convention. But, in the case of a hypothetic ratification, its provisions may bring new legislative modifications, especially if our country has no reserves, though in some cases, would be grounded. The analysis of the compatibility between the actual legislation and the Istanbul Convention will be the subject of a future study.

All these observations have an exhaustive feature. The practice shall prove the logic of our arguments and the need to adopt the proposed improvements, but also the existence of other possible irregularities or misinterpretations of the current legislation.

## References

### I. Treaties and monographs

- Lavinia Vlădilă, Olivian Mastacan, *Drept penal. Partea generală*, Universul Juridic Publishing-House, Bucharest, 2012.
- V. Dongoroz, I. Fodor, S. Kahane, N. Iliescu, I. Oancea, C. Bulai, R. Stănoiu, V. Roșca, *Explicații teoretice ale Codului penal român. Partea specială*, vol. IV, 2<sup>nd</sup> Edition, Romanian Academy Publishing-House and All Beck Publishing-House, Bucharest, 2003.

### II. Studies

- *Cercetarea Națională privind violența în familie și la locul de muncă*, presented on the Partnership for Equality Center, published by the IMAS Marketing and Polls.
- Ortansa Brezeanu, Aura Constantinescu, *Violența domestică. Reflecții*, in the Romanian Penal Law Review, No 2/2007.

▪ *Protecting women against violence – Analytical study on the effective implementation of Recommendation Rec (2002)5 on the protection of women against violence* in Council of Europe member States, published in 2007.

▪ Final Report of the Project *Domestic Violence in Romania: the law, the court system* – American Bar Association, Central European and Eurasian Law Initiative and USAID.

***III. Official websites***

▪ Council of Europe official website: <https://wcd.coe.int/ViewDoc.jsp?id=280915&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

▪ Romanian Ministry of Labor, Family and Social Protection official website: <http://www.mmuncii.ro/pub/imagemanager/images/file/Statistica/Buletin%20statistic/2009/protectiasfamiliei2009.pdf>

***IV. Legislation used***

▪ In force Romanian Criminal Code amended.

▪ Romanian Constitution, revised in 2003.

▪ Law No 217/2003 amended and republished.

▪ Law No 25/2012 for amending and supplementing Law no. 217/2003 on prevention and control of family violence published in the Official Gazette No. 165 of March 13, 2012.

▪ The new Civil Procedure Code.

▪ The former Civil Procedure Code.