

MEANS OF PUNISHING DOMESTIC VIOLENCE UNDER THE NORMS OF THE ROMANIAN CRIMINAL CODE

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Abstract

In order to prevent and sanction domestic violence more effectively, the Romanian Criminal Code has been subject to major changes. These changes refer to the fact that certain offences are more severely punished when committed against family members and there are new regulations concerning a new safety measure, namely the interdiction for the offender to get back to the family domicile for a certain period. These new provisions have caused a decrease in the rate of domestic violence, but the legislation still has gaps leading to unpunished domestic violence cases.

Key words

Offence; safety measure; domicile.

Domestic violence became subject to public debate in Romania after 1995 only. The discussion started from the analysis of the abandoned child situation, continuing with the observance of the family confronted with social problems, and, by identifying these issues, going on with the recognition of the existence of the domestic violence phenomenon. At that time, the Romanian Criminal Code did not contain such norms as to make direct reference to the domestic violence cases. Thus, the possibility to intervene was limited and depended on the way in which the governmental institutions enforced these provisions.

The Romanian Criminal Code that came into force in 1969 does not contain a distinct category of offences with regard to domestic violence. But as a consequence of the alarming increase of violence cases within families, there was an urgent need for amendments in the Criminal Code. Thus, the Criminal Code was altered by Law 197/2000, introducing for the first time the term "family member" and incriminating as aggravated forms of such offences the circumstances under which such an act is committed against a family member. These aggravated forms which are commonly found for instance in the case of offences against bodily integrity, constitute special aggravating circumstances applicable only in the case of those acts for which they are stipulated as aggravated forms. The same law provided a general aggravating circumstance which can be applied for any offence and which leads to the aggravation of the punishment in case the act is committed by violence against the members of the family.

So the purpose of these changes was to establish an aggravation of the sanction provided with regard to the persons who commit violent acts against the members of their families, acts causing physical or psychological pain.

As far as procedural aspects are concerned, it is legally possible to start the criminal trial also "ex officio" in the case of offences against health and bodily integrity when the victim is a family member. For such acts, in order to refer the matter to the judicial bodies it is necessary that the victim of the offence should file a preliminary petition first. If he or she is a member of the same family as the doer, the law-maker provided in a distinct manner the possibility to start the prosecution ex officio as well. The reason for such an exception resides, on the one hand, in the close relationship that exists between the doer and the victim and, on the other hand, in the fear, intimidation of the victim, which can be reasons that prevent him or her from filing a preliminary petition in case he or she is aggressed by the doer.

Only in 2003 was a law regulating domestic violence adopted. This law defines the term of "violence within the family" as any physical or verbal act committed against another member of the same family, causing physical, psychological, sexual pain or material damage. At same time, the prevention of a woman from exercising her fundamental rights and freedoms is assimilated to the notion of domestic violence.

This law does not determine a distinct category of offences with regard to domestic violence. The provisions of the Criminal Code, as well as the acts of physical or verbal violence committed against a family member are aimed at. For the interpretation of the "family member notion", one should also take into account the provisions of the Criminal Code stipulating that a family member refers to "the spouse or close relative, if the latter lives and keeps the same house as the doer". So, if we make reference to the close relative, the condition for the existence of the family member status is that he or she should live together with the doer. As for the spouse, the law-maker does not impose the condition of living together with the doer, considering that the norms regarding domestic violence are also applicable if one of the spouse is the victim of a physical or verbal abuse committed by the other spouse even if the husband and wife are actually separated and live apart.

From the standpoint of security measures for the protection of the victims of domestic violence offences, Law 217/2003 provides that during the prosecution or judgment the court may - at the request of the victim or ex officio, whenever there is clear indication or evidence that a family member committed an act of violence causing physical or psychological pain against another member - decide, with a provisional character, either the security measure of forced medical cure, or the security measure of medical hospitalization, as well as the measure of prohibiting the return to the family's domicile.

If we refer to the measure of prohibiting the return to the family's domicile for a limited period of time, this measure was introduced in the Criminal Code along with its modification in 2000, in an attempt to offer protection to the victims of domestic violence and, at the same time to prevent the commission of similar acts. This security measure can be decided only at the request of the injured party if the following conditions are met:

- the offender should be sentenced to at least 1 year imprisonment, for battery or any other type of violent acts causing physical and psychological pain committed against the members of the family;
- the court should appreciate that the presence of the sentenced person in the family's domicile represents a serious threat to the other members of the family.

Thus, this measure may be taken only following the sentence of the aggressor to at least 1 year punishment which deprives him of liberty and if he represents a serious threat to the other members of the family. But, until the aggressor has been sentenced, there is no other protection measure that the victim can benefit from. The Romanian legislation does not provide a temporary preventive measure, which might aim at the provisional protection of a person against any injury, by instituting an interdiction, namely that another person should not approach the former, or his home, work place or contact him by any means.

As a consequence, the security measures stipulated by the law at present cannot remove the immediate jeopardy that the victims of domestic violence are subject to. Moreover, there are no preventive protection measures, which might perform this role, the preventive arrest being subject to some restrictive conditions, thus inapplicable in most of the domestic violence cases.

Neither Law 217/2003 on the prevention and combating of domestic violence, nor any other normative act can ensure effective protection to the victims of such violence. In the absence of appropriate measures, the victims of domestic violence have to live together with the family aggressor, even if they decide to start a legal action.

As for the means of informing the judicial bodies, in most cases the prosecution of the offender depends on a petition filed by the injured person, an obligatory condition for starting the criminal trial. This is the reason why many of the domestic violence cases do not come before a court so as to be judged: on the one hand, the fear of the injured persons, fear preventing them from filing a petition, and on the other hand, the material or emotional dependence that relates them to the aggressor, constitute an obstacle for starting the criminal trial. Regardless of the motivation, the law-maker should also have taken into account the vulnerability of the victim of such

an offence and should have predicted the possibility of the judicial bodies to act in such cases independently of the will of the injured person.

The reconciliation of the parties also removes criminal liability in the provided situations occurring as exceptions, in which the prosecution starts *ex officio*. This reconciliation equals the end of the criminal trial and non-sanctioning of the aggressor and constitutes a cause annihilating the effect aimed at by the law-makers when they provided the beginning of the criminal trial at the initiative of the judicial bodies.

As a consequence, the shortcomings of the present regulations and non-existence of actual, effective measures that should ensure the protection of the victim and remove the imminent danger in the case of domestic violence, have led to some proposals of modifying the legislation and a project of altering Law 217 of 2003.

The main amendment aims at regulating some special security measures which can be taken in the case of the commission of domestic violence acts: the restrain order and interdiction order.

The measure regarding the restrain order may be taken in either of the following situations:

- a) there are data or clear indication which justify the fear that the doer or defendant will commit another offence against the victim or other family members;
- b) the stay of the doer or defendant in the proximity of the victim or of the family members is socially dangerous.

If the prosecuting body ascertains, from the very moment when the petition is filed by the victim or by the police body, that there are enough data or clear indication justifying the fear that the doer will commit another offence against his family or that the presence, in the family's domicile, of the doer, as a family member, represents a serious threat to the victim, and to the other members of the family as well, they will immediately take the measure, regarding the doer, of special security concerning the interdiction order, or the measure of removing the doer or prohibiting that he should return to the family's domicile for a period of 10 days.

The special security measures have as a purpose the removal of a dangerous situation and the prevention of the commission of domestic violence acts. These measures are not consequences of criminal liability and do not depend on the gravity of the committed act, they can be taken even if the doer does not receive a punishment. The disposal of these measures is caused by the existence of the jeopardy situation that the doer especially represents.

Such measures are extremely useful for ensuring an immediate protection to the victims of domestic violence.

Such an amendment is welcome in the Romanian legislation as a guarantee and materialization of the principle written in art. 1 of the Law on the prevention and combating of domestic violence, according to which: “the protection and support of the family, the development and strengthening of family solidarity, based on friendship, affection, mutual moral and material help among the members of the family, constitute an objective of national interest.”

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