

Domestic Violence Victim Protection. The Temporary Protection Order

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ABSTRACT: Domestic violence is one of the most common crimes in Romania, with multiple causes ranging from poverty and alcohol consumption to social constraints and lack of education. The increased reporting of domestic violence has led decision-makers to identify effective legal measures for the protection of victims, in particular, limiting immediate risks to their physical and mental integrity. The present paper aims to present some legal instruments that the Romanian legislator makes available to the police to allow immediate protection of the person who has become a victim of domestic violence. The article is focused mainly on the analysis of the temporary protection order, which is a recent legal instrument introduced into domestic violence legislation. The temporary protection order is a measure to immediately safeguard the protection of victims of domestic violence, but in practice difficulties have been identified in its application. There is also controversy over its application and the potential violation of the legal rights of the alleged aggressors. We will examine the application of the temporary protection order in practice and its effects in relation to its purpose, with reference to its correlation to the other instruments already regulated and the possibilities for improving the legislation.

KEYWORDS: domestic violence, abusive relationship, victim protection, temporary protection order

Introduction. A history of indifference to domestic violence

The statement that the protection measures for the victims of domestic violence in Romania have not been easily adopted would be an underestimation of the actual situation. In early 2000, when the first sociological research into domestic violence was launched, domestic violence was not a matter of concern to the media or authorities. But it was a phenomenon that spread across society and affected victims regardless of age, the standard of living, education, or the environment.

In 2003, data from the NGO EPC – Partnership Center for Equality's "National research on domestic and workplace violence" (Marinescu and Ștefănescu 2016) showed both the real expression of domestic violence across the whole sample of the studied population (14,3% of all the respondents said they had been victims of domestic violence during their lifetime and 8% supported it for the last 12 months before the survey) and continued "clichés" about the subjective image of this social phenomenon (people who agreed to statements such as: "the battle is broken out of the rave," "a man who does not beat his woman does not love her", "the woman is the property of man" – they accounted for 78% of the population with the right to vote investigated).

The research found that domestic violence was a "dual phenomenon" in society, not only in real terms but also in the "collective mentality" of Romanian women and men. These violent acts were perceived as normal by a large part of the population surveyed in this investigation, which is largely due to the explicit adherence of the subjects to a set of values and rules justifying such acts.

The results of the above-mentioned study coincided with the start of Romania's accession process to the European Union. The need to align with European legal norms and the pressure from civil society on the national legislator led to the adoption of Law 217/2003 to prevent and combat domestic violence (Provita Bucharest 2003). The law provided for the setting up of an agency for family protection, which was to create, with the financial support of local authorities, shelters and recovery centres for victims, centres for aggressors, but also a free emergency phone line. Despite requests from the NGOs, the authorities decided not to provide in the law the possibility of issuing an order to protect the victim, a measure that has existed for years in other European countries. The main reason invoked by the national legislator was that such a measure

could violate the constitutional right to property of one of the partners. In practice law 217/2003 provided very few means of protection to the victim. After filing a criminal complaint with the police against the aggressor, the options the victim had were to return to the house where he lived or to find some other place to live, at the risk that he could find her at any time.

Four years after the accession to the European Union and eight years after the first law to prevent and fight domestic violence was issued, in a protest before the Romanian Parliament, the national NGOs requested the protection order again (HotNews 2011). At that time Romania was the only EU country that had no provision in the law for implementing the protection order. By comparison, Bulgaria, along with which Romania joined the European Union in 2007, had the protection order since 2005.

In spring 2012 a tragic case underlined in a brutal way the need for the protection order to be established. That year, on March 1st, a police officer shot his wife and a co-worker to death, injuring six others in the "Perla Dorobanți" hair salon where they worked (Wikipedia 2012). The killing brought back the protection order into public discussion, after it was found that the victim had filed a criminal complaint with the police in which she said she felt threatened by her husband, who also owned a weapon, but had not had a tool to keep him away.

First Regulation of the protection order, criticism, and controversy

In 2012 Law 217/2003 was supplemented by Law No 25 of 9 March 2012. It adds to the 2003 Law the following provision "the person whose life, physical or mental integrity or freedom is endangered by an act of violence on the part of a family member may ask the civil court, to eliminate the state of danger by issuing a protection order". The order was decided by a judge and he could evacuate the aggressor from the house, even if it was his own, force him to keep a minimum distance from the victim, his residence, his place of work, or his children. The order could also forbid the attacker from any contact, including by telephone, mail, or any other way with the victim, and force him to psychotherapy sessions.

But to obtain the protection order the victim had to submit, in addition to an application to the court, any of the following documents: A medical-legal certificate proving the wounds and which takes 10 days to complete, statements by witnesses, audio-video recordings, criminal complaint lodged with the police. In most cases the victim continued to live with the aggressor while she was trying to gather these documents. Moreover, there is was legal deadline for the judge to decide whether or not to give the order.

According to a study of Costea, Despa and Chiforiuc (2015) carried out in 2014 by NGO "VEF network", showed that in the first year of implementation of the protection order, the average time to obtain an order was 33 days (Sitaru and Zăbrăuțanu 2019). In the same study, the NGO proposed the introduction of an emergency protection order, to be given within 24 hours of the police in case of an immediate risk situation.

In 2015, the "Necuvinte" NGO, in cooperation with a law firm drafted a proposal to amend Law 217/2003 by introducing a maximum of 72 hours for the protection order to be issued by the court (Stiri ONG 2015). The NGOs proposal was transformed into a draft amending the law, then voted by the Parliament.

The 72-hour period, however, concerned the trial of the request for a restriction. The law did not foresee anything about the period between the violent incident and the day when the victim came to submit the request for the order to the trial, along with other evidence. In 2015, NGOs estimated that this deadline was approximately 8 days. For people in rural areas, without access to information and institutions the term increased to 20 days.

Other critics concerned the use of the restrictive expression "family violence" rather than "domestic violence", although the practice of the courts shows that the "family" was seen in the broader sense, including concubine, tutors, former spouses and other persons close to the victim.

The law also did not provide for specific penalties in 2015 for breach of the protection order, limiting it to the liability of the aggressor for failure to comply with court proceedings under criminal law (Ghiță 2014). This has contributed decisively to a new case of extreme domestic violence that we will detail in part three of the paper.

The measure to establish the protection order was also the subject of an appeal filed with the Romanian Constitutional Court, by an aggressor in a 2014 criminal case. The plaintiff stated that the issue of the protection order would result in an unjustified restriction on individual freedom, the right to free movement, the right to family and private life, the parent's right to provide education for minors, the right to private property, and also exceeded the constitutional framework within which restrictions on the exercise of certain rights or freedoms may take place.

The Romanian Constitutional Court has retreated these criticisms, as they allow interested parties to benefit from the legal rights and procedural guarantees imposed by law within a short time, imposed by the need to swiftly restore social order and to remove any danger that affects the safety, physical and mental integrity of the victim.

The tragedies that have shaped legislation. The temporary protection order

In 2016, in a project carried out by the NGO "VEF Network" a working group of magistrates, government representatives, the Romanian Police, and the NGO debated the possible modification of the law to introduce the provisional protection order (NGO "Rețeaua VIF" 2016). The initiative was reticently regarded by the Romanian Police, as they thought such a responsibility would affect their working time.

The subject of the interim protection order entered a hiatus until January 2018 when an act of extreme domestic violence outraged the public (Sandu, 2019). On 26 January 2018, a man from Bucharest killed his wife in the kindergarten where she worked. The deed occurred while several children and their parents were present in the kindergarten. Before the crime the victim had obtained a protection order, which the aggressor had not respected. At that time in Romania there were 300 cases of murder against family members between 2014 and 2018 and there was no clear system of supervision for those who were given orders. In 2018 of the 3775 protection orders issued, 1424 were violated, but their actual number was estimated to be much higher.

At the time of the "kindergarten crime", the bill on amending Law 217/2003 for the introduction of the provisional protection order had been under public debate since spring 2017.

In June 2018 the law received its final vote in the Chamber of Deputies and on July 18, 2019 was published in the Official Gazette, Part I, no 618 as "Law No 174/2018 for amending and supplementing Law No 217/2003 for preventing and combating domestic violence". The law mentioned however that the procedures for issuing the provisional protection order would be published at a later date, within a maximum of 120 days.

The rules were issued by order of the Ministry of Internal Affairs (MAI) No 146/2578/2018 "on how the police officers were to deal with cases of domestic violence", which has entered into force since 28.12.2018.

According to order No 146/2578/2018, as of 28 December 2018, policemen may issue the interim protection order, ordering, for five days, one or more measures to protect victims. The order shall lay down the procedure for the intervention of the police officers, on cooperation with the other institutions concerned with the prevention and control of domestic violence, the methodology for using the risk assessment form and the procedure for issuing the provisional protection order, and its implementation.

Police interventions in cases of domestic violence may be made ex officio or following written or oral reporting of complaints received through the Single national Emergency call System (112), directly or by telephone on the premises of police units by persons involved in domestic violence, persons who have witnessed the occurrence of domestic violence or by others.

The arrangements, the police may take measures to separate the victim from the aggressor and take any other steps necessary to eliminate immediate risks. They shall observe and ask

questions about the physical condition of the persons involved and, if necessary, request the intervention of medical teams. Also they must inform both the victim and the aggressor of their rights and obligations and the measures that will be decided upon following the assessment of the facts. The order also stipulates how the police must act in special situations, for example in case the aggressor is evacuated from the building.

During the intervention, to establish the existence of an imminent risk that the life, physical integrity or liberty of persons be endangered by an act of domestic violence, policemen shall assess the factual situation based on the risk assessment form containing 21 questions. Based on the responses, it shall be determined whether there is a real risk that the life or physical integrity of the victim will be endangered.

The first seven questions related to situations of higher severity. Thus, among other things, the victim will have to answer the following questions: "Has the aggressor/assaults ever tried to kill you?", "Has he ever used weapons or objects to hurt you?" Or „have you suffered an injury as a result of this incident? Cuts/shots, burns, mutilations, other?. If two of the first seven questions are answered yes, the policeman will put the situation in "imminent risk to the victim" and will be able to issue the interim protection order.

Where the conclusions resulting from the preparation of the risk assessment form indicate that there is an imminent risk that the life, physical integrity or liberty of the victim may be endangered, the police officer who has drawn up the risk assessment form shall issue the interim protection order. When evacuating temporarily, the aggressor is given the time it takes to take his identity documents, money, medicines, or other basic personal property of necessity.

To the aggressor, the policeman, by provisional protection order, may order other obligations or prohibitions, namely: to maintain a minimum determined distance from the victim, from his or her family, from the residence, place of work or educational establishment of the protected person or, where appropriate, the handover of his or her weapons to the police.

According to the statistics made available by the Romanian Police, in the first 8 months of 2019, at the national level, police issued 5.096 interim protection orders, of which 1.850 were confirmed by the court and became protection orders. Most of the interim protection orders were issued at the request of the victims, 39 at the request of others, and 53 at the request of other institutions empowered to do so.

In terms of the place where the offence was committed, 67% of the interim protection orders were issued for acts committed in urban areas. Compared to the same period in 2018, there were drops of more than 30% in personal injury claims, more than 5% in murder offences, and almost 10% in attempted murders. Also, the blackmail deeds (by 20%) and the family abandonment (by 5,6%) are decreasing. In terms of the place where the acts were committed, most of the offences (77%) were committed at the joint home of the victim and the aggressor.

Conclusions

As we see from the analysis of the regulation of measures to protect victims of domestic violence, the introduction of the interim protection order is not just a welcome change but a mandatory one.

In addition to the legitimate critics of the delay with which this provision was adopted, we cannot fail to note that six months passed between the time when the law was enacted and the adoption of implementing rules, in which victims of domestic violence were unable to benefit from such hard-earned legal rights.

Another criticism brought by the Romanian law professionals is the overlapping of the provisions of order No 146/2578/2018 with the civil law rules (Bălan, Olac, Şinc and Vaida 2019). Thus, the fact that police are forced to carry out a series of legal acts specific to family law raises concerns about potential enforcement failures. In this context, even if the fundamental role of the provision – immediate rescue of the victim is fulfilled, procedural flaws can be invoked by the aggressor as a violation of his rights.

It is to be appreciated that the introduction of the risk assessment form allows police to support their findings on the ground and allow a rapid response to critical situations when victims are under extreme emotional stress. But the main issue remains that these orders and the measures they provide for are respected.

In this respect, we believe that a dual approach is needed: from the perspective of punishing the aggressor who chooses to go beyond the obligations and bans imposed on him and from the perspective of preventing the acts by which the aggressors of the protection orders are being violated.

On this occasion we welcome the fact that the Romanian Senate has debated a proposal to amend the law which provides for increased penalties for aggressors does not comply with the protection orders. Furthermore, the legislative proposal also provides for free legal assistance to the victim requesting a protection order.

Finally, we believe that the problem of domestic violence is not only about preventing re-evaluation by issuing protection orders and penalizing the acts already committed by the instruments that the law provides. The problem of domestic violence also includes an important social service component for victims of domestic violence and a prevention component. Part of prevention also means awareness, which can only be achieved through information and the attention that the public chooses to place in this direction.

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