



Summary of the Results Obtained in the Scientific Investigation of Crimes of Domestic Violence (Part I)

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Abstract: *This scientific article is devoted to some legal-criminal issues synthesized and analyzed in the scientific research of the criminal acts of domestic violence provided for in art.2011 Criminal Code of the Republic of Moldova. Considering the recent conceptual changes that the incriminating framework of domestic violence has undergone, the author intervened with new interpretations of some legal categories that need to be analyzed. The research was carried out based on the author's own empirical data obtained from the analysis of judicial practice in this field, as well as based on the most recent doctrinal sources both in the field of criminal law and other sciences (criminology, psychology, sociology, pedagogy). As a result of the study, conclusions and interpretations were formulated that can be used in the science of criminal law, as well as in the practice of application of the legal-criminal norm on domestic violence (Article 2011 Criminal Code of the Republic of Moldova).*

Keywords: *family violence; family solidarity; family security; inhuman treatment; bullying; family abuse*

The topicality of the issue is highlighted by the fact that the family is the most dangerous place and the most exposed to violence, and cases of violence become latent because of the closed nature of intra-family conflicts, which take place within the limits of a specific territory (the living place): a person is much more likely to be hit or killed in their own family than anywhere else, by anyone else. In this scientific approach, criminal liability for the criminal acts of domestic violence provided for in Article 201¹ of the Criminal Code of the Republic of Moldova will be addressed. Although domestic violence as a sociological and criminological phenomenon is not the object of research of this PhD thesis, the clarification of the questionable aspects of criminal liability for criminal acts of domestic violence cannot be carried out without identifying these sensitive points of domestic violence.

The protection of the family against any acts that may harm its existence is one of the first priorities that determined the need to protect the social order. Thus, according to the data published by the Ministry of Internal Affairs of the Republic of Moldova, during 2016, out of the 38,856 crimes recorded in total 1782 were attributed to the

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category of those who attack family values, and during 2017, out of the 32,956 crimes recorded in total 956 crimes were referred to the category of those who attack family values. During 2017, the Police Inspectorates received 10871 referrals concerning conflicts in family relations, and for 853 of these cases criminal proceedings were initiated based on the constituent elements of the crime component provided for in art. 2011 Criminal Code of the Republic of Moldova (Domestic Violence)¹. At the same time, according to the Information Note on the state of crime against life and health of the person, as well as those committed in the sphere of family relations for 6 months of 2018, as a result of crimes of a family nature became victims 361 women (including 23 minors), 119 men (including 10 minors), and aggressors are 425 men and 54 women. Out of the total number of 611 cases of domestic violence (6 months of 2018) for 431 cases criminal proceedings were initiated based on the constituent elements of the composition of the crime provided for in Article 2011 of the Criminal Code of the Republic of Moldova (Domestic Violence). During the period under review, the Police issued 1914 emergency restraining orders against family aggressors².

Framing the theme in international concerns. At international level, this research topic is addressed by using two notions: “domestic violence” and “violence in the family”, in comparison with national legislation on the subject which accepts the term “violence in the family”. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul, 11.05.2011) defines, in Article 3, domestic (family) violence as all acts of physical, sexual, psychological or economic violence occurring in the family or in the domestic unit or between former or current spouses or partners, regardless of whether the perpetrator shares or has shared the same home with the victim³.

In the preamble to the UN Convention on the Rights of the Child, the family is considered the natural environment for the development and well-being of all its members - especially children - recognizing that the family has the greatest potential to protect children and ensure their physical and emotional safety⁴. According to the provisions of

¹ Informative note on the state of crimes against the life and health of the person, as well as those committed in the sphere of family relations during 12 months of 2017 [cited: 29.04.2022] Available:

http://politia.md/sites/default/files/ni_violenta_in_familie_12_luni_2017_plasare_web.pdf

² Information note on the state of crime against life and health of the person, as well as those committed in the sphere of family relations during 6 months of 2018 [cited: 02.03.2022] Available:

http://politia.md/sites/default/files/ni_violenta_in_familie_06luni_2018_plasare_web_-_finala.pdf

³ EC Convention on preventing and combating violence against women and domestic violence (Istanbul, 11.05.2011) [cited: 30.12.2021] Available:

<http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20Romanian.pdf>

⁴ UN Convention on the Rights of the Child. Adopted by the UN General Assembly on 29 November 1989. Entered into force on 2 September 1990. [11.03.2022] Available: http://www.unicef.org/moldova/CRC_RO.pdf

Article 2(a)(1) of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, "victim" means: a natural person who has suffered harm, including harm to his or her physical, mental or emotional integrity or economic loss, directly caused by a crime; family members of a person whose death was directly caused by a crime, who have suffered harm as a result of that person's death. According to point 19 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, a person should be considered a victim regardless of whether the offender has been identified, arrested, prosecuted or convicted and regardless of the family relationship between them¹.

An international instrument for the protection of victims of domestic violence served as Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order². Article 2 of this Directive defines **the European protection order and "protection measure"**. *The European protection order aims* to protect victims of any form of violence, whereas the national order has a narrower scope, limited only to victims of domestic violence. It is therefore necessary and unavoidable to amend the legislation to extend the possibility of issuing a protection order to other categories of victims of violent crime, not just domestic violence. At international level, therefore, the notions of protected person - a natural person benefiting from protection arising from a protection measure adopted by the issuing State, *and person at risk* - a natural person on whom one or more of the prohibitions or restrictions referred to in Article 5 of Directive 2011/99/EU have been imposed - have been formulated.

ECtHR judgments against the Republic of Moldova (*Mudric v. Republic of Moldova*. ECtHR judgment of 16 July 2013, final on 16 October 2013 (Strasbourg). Application No. 74839/10; *Eremia v. Republic of Moldova*. ECtHR judgment of 28 May 2013, final on 28 August 2013 (Strasbourg). Application No.3564/11; *T.M. and C.M. v. Republic of Moldova*. ECtHR judgment of 28 January 2014, final on 28 April 2014 (Strasbourg). Application no.26608/11) likewise provided considerable support in the investigation of domestic violence from a legal-criminal point of view. We noted that in all cases the authorities were apparently unable to provide any kind of protection in the absence of a formal request from the complainants, even if they knew about the physical abuse, including of minors. The authorities failed to appreciate the seriousness and extent of the problem of domestic violence and its discriminatory effect on women and led to repeated tolerance of violence and reflected a discriminatory attitude towards victims.

¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA. In: Official Journal of the European Union L 315/57, 14.11.2012. [cited: 22.02.2022] Available: http://aleg-romania.eu/wp-content/themes/Aleg/documents/directiva%20UE%20protectia%20victimelor%20unei%20infractiuni_2012.pdf.

² Idem.

Under the influence of the provisions of the Istanbul Convention, which through these measures ensures the protection of women against violence¹ *acts of persecution* that were not previously contained in the current legislation of the Republic of Moldova, today, following the amendments made to the extra-criminal legislation, constitute an offence. The Moldovan legislator decided to establish liability for acts of persecution not in the Criminal Code but in the Contraventions Code, although there was such an initiative. At the national level, Law No.196 of 28.07.2016 revised Article 2011 of the Criminal Code of the Republic of Moldova². The revision of the normative framework concerned not only the criminal law, but also the entire system of law, with essential changes being introduced in the Contravention Code of the Republic of Moldova, No.218 of 24.10.2008, *in the Law of the Republic of Moldova on preventing and combating domestic violence*, No.45 of 01.03.2007, etc. These amendments concern: improvement of the victim protection mechanism by means of a new institution - "emergency restraining order"; inclusion of new offences "Domestic violence" (art.781 Contravention Code) "Acts of persecution" (art. 782 Contravention Code); extension of the circle of persons who are recognized as family members in the sense of art.1331 Criminal Code of the Republic of Moldova. However, the steps taken by the legislator have not been consistent: some major deficiencies have remained in the incriminating text, new errors of legislative technique have been added in the area of domestic violence, and, as a result, judicial practice in this area has become uneven (conclusion drawn from the analysis of the practice of application of Article 2011 of the Criminal Code of the Republic of Moldova, the empirical basis being made up of 204 cases). Therefore, there is no uniform point of view on the qualification of the actions of persons accused of committing offences under Article 2011 of the Criminal Code of the Republic of Moldova, committed before the entry into force of Law No. 196 of 28 July 2016. In order to remove both doctrinal divergences and legislative shortcomings in the field of criminal liability for committing intra-family violent crimes, as well as to contribute to the formulation of recommendations for the application of criminal law, the need to develop a scientific approach has proliferated. Therefore, all aspects of criminal liability for domestic violence are to be analyzed and addressed.

Considering international and foreign regulations on domestic violence³ from a legal-criminal point of view, the categories of **abuse and violence** should be treated as identical. Depending on the specifics of the commission of the violent act, i.e., the relationship between the aggressor and the victim, all these forms of violence against

¹ EC Convention on preventing and combating violence against women and domestic violence (Istanbul, 11.05.2011) [cited: 30.12.2021] Available: <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20Romanian.pdf>.

² Law of the Republic of Moldova on amending and supplementing certain legislative acts, No.196 of 28.07.2016. In: Official Monitor of the Republic of Moldova, 2016, No. 306-313.

³ Recommendation No.R(85)4 of the Committee of Ministers to Member States on Violence in the Family (Adopted by the Committee of Ministers on 26 March 1985 at the 382nd meeting of the Ministers' Deputies) [cited: 30.04.2022] Available: http://www.coe.int/t/dghl/standardsetting/victims/recR_85_4e.pdf.

the family member can be subsumed under the following types of violence: violence against oneself; interpersonal violence; collective violence¹.

The wide range of issues raised by the analysis of foreign literature on domestic violence leads us to the conclusion that the vector of the defence of social values through legal-criminal law is moving in a feminist direction. At the same time, we consider that the creation of any legal privileges or restrictions based on the sex of the victim would constitute a violation of the principle of equality embodied in Article 16 of the Constitution of the Republic of Moldova. In our opinion, the only legislative exception would be the legal-criminal norm on pre-murder (Article 147 of the Criminal Code of the Republic of Moldova), but the privileged character is not due to the sex of the perpetrator (biological mother of the child), but to the psychophysical state accompanied by a diminished discernment caused by the birth process.

The following trends have emerged in the legislation on domestic violence in several foreign countries: the legal-criminal protection of the inviolability of the person in the family as a special legal object; the introduction into criminal law of special components of offences which incriminate criminal acts directed against those who are part of the family circle; the legislative tendency to substitute the incrimination of intra-family criminal acts with the criminalization of criminal acts committed against women and minors; proposals to make criminal liability for offences committed in circumstances of domestic violence more severe; release from liability in connection with the amicable resolution of family conflicts; conditional release from criminal punishment in connection with social adaptation training.

By introducing Article 201¹ of the Criminal Code of the Republic of Moldova, the legal-criminal protection of the inviolability of the person in the family is achieved, by introducing into the criminal law special components that incriminate criminal acts directed against those who are part of the family circle. In all criminal forms of domestic violence, *the presumption of knowledge of the family relationship between the perpetrator and the victim* is used as an obligatory sign of the subjective side.

In our opinion, the notion of *family* in the criminal law sense is not identical to that of *family law and civil law*, being broader, which would correspond to the purpose of the criminal law protection of the inviolability of the person in the family. In the criminal law sense, the family is a social group of persons united by blood relations, common marriage and emotional ties based on mutual moral and legal obligations arising from marriage, cohabitation, kinship or adoption. At the same time, family security together with family solidarity is the special legal object of the criminal acts of domestic violence provided for in Article 201 of the Criminal Code of the Republic of Moldova. Family solidarity (a certain family ideology based on a set of family values and skills) and family security (social, physical, psychological (spiritual, intellectual, emotional), educational and financial-material well-being of each family member, who has the right to be free from extra- and intra-family dangers) constitute the main legal object of the criminal acts of domestic violence

¹ Naum, M. *Crimes against the person's bodily integrity or health: abstract of the PhD thesis*. Bucharest: University of Bucharest, Faculty of Law, Doctoral School, p. 4.

embodied in Article 2011 of the Criminal Code of the Republic of Moldova, the interdependence of these two categories having been demonstrated¹.

We believe that the criminal law should not offer equal legal and criminal protection to any person who is in any form of cohabitation with a partner, and that the "quality" and "duration" of the relationship cannot be assessed at the discretion of the court.

In view of the above, we can summarize that *violent crimes within the family* have specific common features: they attack two objects; the place and the environment in which the crime was committed contribute to the serious consequences; the form of guilt is always intentional, and the motives are typical of the family; there are specific relationships between the perpetrator and the victim.

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¹ Corcea, N. & Fortuna, Gh. (2017). Generic legal object and special legal object of domestic violence (art.2011 CP RM). In: *Scientific Journal of the State University of Moldova "Studia Universitatis Moldaviae"*. Series "Social Sciences", no. 3(103), p.109.

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