



Special Legal Issues Encountered in Establishing Protection Orders

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Abstract: Romanian legislation in force, particularly Law No. 217/2003, has attempted to shed more light on issues that have long dominated and concerned our society – domestic and intimate partner violence – and finding viable solutions to reduce this phenomenon, which has reached alarming proportions in recent years, especially in rural Romania. The latest shocking case, in which an abusive husband against whom a protective order had already been issued kidnapped, raped, and killed his ex-wife with 15 knife wounds, shows us how deeply physical violence has penetrated family environments in Romania and how serious the consequences can be when drastic measures are not taken or when the competent authorities fail to respond appropriately in such cases. This article aims to briefly analyze some of the unusual social and legal situations encountered in the establishment of protection orders, issues that raise questions both about the distinct interpretation of admissible evidence in the imposition of the measure and about the separate analysis of some courts regarding the application of relevant legislation.

Keywords: violence; family; order; case law

1. Introduction

Domestic violence, usually perpetrated against women (considered to be part of the vulnerable segment of the population) is not strictly a women's rights issue, but also a real public health problem. Domestic violence often manifests itself through aggressive psychological and/or physical behavior on the part of the partner, with the aggression consisting of sexual coercion, abuse, and even excessive control over

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the victim (World Health Organisation, Violence Against Women, 2021, in Barbier, Chariot & Lefèvre, 2022, p. 2).

Violence against women in couples or in other types of relationships (cohabitation or intimate relationships of other kinds) is defined by the World Health Organization as any behavior that causes physical or psychological harm and involves "sexual coercion, psychological abuse, and controlling behavior"¹ this type of violence being perpetrated by both current and former intimate partners (Gracia, Lila, Santirso, 2020, p. 2).

Attitudes towards intimate partner violence against women (IPVAW) affect not only the victims' relationship, but also their work and social environment in general. In turn, these individuals (e.g., neighbors, friends, colleagues) can influence the phenomenon, as can professionals who are empowered to deal with evidence of this kind (people in the legal, defense, service, and health fields), who can have an impact on personal, community, and institutional responses related to IPVAW. (Arbach & Bobbio, 2018, pp. 105-112; Browning, 2002, pp. 833-850; Emery, Jolley, & Wu, 2011, pp. 373-383; Flood & Pease, 2009, pp. 125-142; Taylor & Sorenson, 2005, pp. 573-589; Voith, 2017, apud Gracia, Lila & Santirso, 2020, p. 4).

2. The Situation of Domestic Violence and Violence against Other Members of Society in the EU

In Europe, the latest EUROSTAT statistics show that in the very recent past, 1 in 3 women has been assaulted in one of the forms mentioned in the legislation in force, with violence being recorded both at home and in public or at work. EU Gender Based Violence Survey. Experiences of women in 2024 results showed that in the 27 EU member states, of the 11,400 women interviewed between the ages of 18 and 74, 13.5 percent had suffered psychological violence or been threatened with violence (but not actually physically assaulted), while 17.2 percent were victims of physical assault such as rape or sexual assault (molestation)².

The fact that domestic violence is increasing at an alarming rate in Romania is demonstrated by statistics from 2024, which show a total of approximately 60,000

¹ World Health Organization, 2021, pag. 10, cited in <https://www.who.int/news-room/detail/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>, consulted in 11.11.2025, 19, 35.

² Eurostat, European Union Agency for Fundamental Rights, EU gender-based violence survey – Key results. Experiences of women in the EU-27, Publications Office of the European Union, Luxembourg, 2024, p. 14. See at https://fra.europa.eu/sites/default/files/fra_uploads/eu-gender_based_violence_survey_key_results.pdf consulted in 9.11.2025, 7,22).

cases nationwide, a number that is 33 percent higher than in 2019, with most victims being minors and women¹.

According to statistics obtained from the Public Ministry website, violent crimes committed in 2024 involved, for example, 505 people prosecuted for assault or other violence under Article 193 of the Criminal Code, 23 for bodily harm under Article 194 of the Criminal Code, 14 for assault or injury resulting in death under Article 195 of the Criminal Code, 77 for rape under Article 218 of the Criminal Code, and 151 for abandonment of family².

As regards the ratio between victims and aggressors, the same report tells us that in the case of assaults and other acts of violence, approximately 164 cases occurred within cohabiting couples, while 183 cases occurred between spouses³.

In 2023, the figures were even more worrying, in the sense that there were 606 people charged with assault and other domestic violence, 12 for assault or injury causing death - Article 195 of the Criminal Code, and 91 for rape⁴.

According to information made public through the Social Monitor⁵ approximately 49 percent of women in Romania who have or have had a partner have been victims of physical or psychological violence. Most of the women in this situation – over 60 percent – have only a primary education (elementary school), while those with a secondary education (high school, post-secondary) account for a much lower percentage in surveys, most often belonging to rural areas or small towns where there is a low level of access to education or support from the authorities when they request social or legal assistance, temporary shelter, or employment.⁶

¹ <https://www.digi24.ro/stiri/actualitate/violenta-domestica-in-crestere-alarmanta-60-de-mii-de-cazuri-la-nivel-national-in-2024-victima-nu-trebuia-sa-ies-din-cuvantul-lui-3166461>, published in 21. 03. 2025, consulted in 10. 11. 2025, 17, 18.

² Parchetul de pe Lângă Înalta Curte De Casație și Justiție Secția De Resurse Umane și Documentare Date Statistice privind Victimele Violenței în Familie, în Anul 2024/ Prosecutor's Office at the High Court of Cassation and Justice, Human Resources and Documentation Section, Statistical Data Regarding Victims of Domestic Violence, in the Year 2024, https://www.mpublic.ro/sites/default/files/PDF/violenta_in_familie_2024.pdf, consulted in 10. 11. 2015, 17, 00.

³ Idem.

⁴ Parchetul de pe Lângă Înalta Curte de Casație și Justiție Secția de Resurse Umane și documentare date statistice privind victimele violenței în familie, în anul 2023/ The Prosecutor's Office at the High Court of Cassation and Justice, Human Resources and Documentation Section, statistical data on victims of domestic violence, in 2023, https://www.mpublic.ro/sites/default/files/PDF/vf_2023.pdf, consulted in 10. 11. 2025, 17, 10.

⁵ <https://monitorsocial.ro/> consulted in 11.11.2025, 17,35.

⁶ Justiție socială, România se află în rândul țărilor U.E. cu cea mai mare rată a violenței asupra femeilor în cuplu/ Social Justice, Romania is among the EU countries with the highest rate of violence against women in relationships, 16.06.2025, apud.

In its fight against the alarming increase in violence of all kinds within families, between partners, and even between roommates, the state has made both legislative and educational efforts through information and awareness campaigns. Our country even has a national strategy for preventing and combating domestic violence¹ which is based on the protection of the (precarious) status of women in Romania, as established in the text of this Strategy, which states that "violence against women is favored by unequal power relations between women and men that lead to the domination and discrimination of women"; or that "children are also affected by domestic violence even when the violence is not directed at them, but they are merely witnesses to violence².

Special situations regarding the analysis of evidence for the establishment of protection orders by courts of law

According to Article 38(1) of Law No. 217/2003 "A person whose life, physical or mental integrity, or freedom is endangered by acts of violence committed by a family member may request the court to issue a protection order to remove the danger, ordering, on a provisional basis, one or more of the following measures - obligations or prohibitions whereby the aggressor is evicted, the aggressor's right to use the shared home, even partially, is restricted, the aggressor is required to maintain a spatial distance from the victim, children, or other members of the victim's family, prohibition of any contact, including by telephone, correspondence, or any other means, with the victim, obligation to wear a bracelet-type device so that the victim and the authorities can quickly locate the perpetrator if he violates the restrictions imposed by the court.

We would like to point out that in the case of protection orders, the violence in question does not necessarily have to be physical, but can also be psychological, which, of course, requires careful analysis by the criminal investigation authorities and the judge hearing the case.

The latter often has extremely little time to analyze the evidence, but, more seriously, cannot perform a relevant and conclusive analysis of the issues that should have been relevant, because the victim or the parties do not provide the judge with coherent and clarifying evidence – recordings attesting to the violence, images from surveillance cameras in the stairwell of the apartment building, photographs, CDs, forensic medical certificates, or evidence that the victim has filed a criminal complaint against the aggressor, who is usually not a first-time offender.

<https://romania.fes.de/ro/e/romania-se-afla-in-randul-tarilor-ue-cu-cea-mai-mare-rata-a-violentei-asupra-femeilor-in-cuplu.html>, consulted in 11.11. 2025, 17, 52.

¹<https://violentaimpotrivafemeilor.ro/wp-content/uploads/2015/06/Strategia-nationala-violenta-in-familie.pdf>, consulted in 11.11. 2025, 11, 09.

² Idem.

Regarding assaults and their nature, the European Court of Human Rights has emphasized the state's duty to take reasonable protective measures in cases of domestic violence, "even in situations where the threats made by the alleged aggressor have not materialized into actual acts of physical violence". Thus, in the case of *Hajduova v. Slovakia*, it was shown that, especially in cases where the aggressor is known to have a history of violence against the victim, his threatening attitude could generate a state of fear in the victim from the outset, "in the sense that the threats could be put into practice". "This was, in the opinion of the European Court of Human Rights, sufficient to affect her mental integrity and well-being, thus activating the positive obligations of the state to protect victims of domestic violence, given their known state of high vulnerability" (Civil sentence no. 5559, 9th of October 2025, Galați Court, unpublished).

All the more so in the (exceptional) situation where the defendant admits to the facts, the court may state in its reasoning that, at present, the defendant's behavior "includes manifestations that are in themselves capable of affecting mental and physical integrity", manifestations that fall within the scope of domestic violence, as defined by the legislature, and which attract the provisions of Law No. 217/2003.

Another relevant aspect in this case was the fact that psychological damage was found in a minor child, the victim's daughter, who was a partial witness to the physical and verbal abuse inflicted by the defendant on her mother. Therefore, measures were also imposed to protect the minor victim, as "in the opinion of the court, these events represent psychological pressure on the minor, pressure that gives rise to an emotional conflict that is difficult to manage. As time passes, children become increasingly aware of aspects of their family life and build interpersonal relationships with their parents and other relatives, and the emotional bonds formed during childhood have serious repercussions on their entire development (Civil sentence no. 5559, 9th of October 2025, Galați Court, unpublished).

In this case, taking into account the statements of both parties, the documents submitted to the court (a medical certificate attesting to the serious bodily injuries suffered by the victim, which required approximately 20 days of medical care), messages received by the victim from the aggressor, which contained a high degree of verbal violence (threats of beating or death, destruction of property), the court concluded that a protection order should be issued for six months in accordance with the principle of preventing acts of domestic violence, enshrined in Article 2(1)(c) of Law No. 217/2003, but also with the need to ensure the proportionality of the measure to the seriousness of the situation, letter c) of Law No. 217/2003, but also to the need to ensure the proportionality of the measure to the seriousness of the situation. This meant that the judge in the case noted that there was a real and imminent danger that threatened the life and safety of the victim and her family.

In analyzing another situation, the court established that the analysis of the lawsuit takes into account the fact that the purpose of establishing a protection order is to prevent an imminent danger generated by the violent behavior of the aggressor, a danger that must be "concrete, real, and present, based on acts of physical or psychological violence against the victim and not on assumptions or tense situations". For this reason, in this case, the protection order was not issued because the analysis of all the evidence in the case did not reveal "the clear existence of acts of violence attributable to the defendant, including with regard to the claimant's property".

In this case, too, following the evidence presented (statements by the parties, direct witnesses), the court established that the issuance of a protection order constitutes 'a direct interference in the private and family life of the parties', which is why such a measure may be ordered "only in exceptional circumstances, characterized by the existence of a real and present danger". However, from the analysis of all the evidence presented in the case, it was not clear that there had been any acts of violence attributable to the defendant, including regarding the claimant's property (Civil sentence No. 5570/2025, 10. 10. 2025, Galați Court, unpublished).

In another case involving serious discussions regarding the evidence presented by the claimant, who failed to prove the danger posed to himself or his wife, the court held that: the only act that demonstrated violence in relation to the claimant, but also in the interpretation of Article 2 of Law No. 26/2024, was the threat of physical violence. Furthermore, the audio recordings submitted to the case file show that the defendant struck the plaintiff and spoke to him in an extremely harsh tone, and the forensic medical certificate no. dated 03.09.2025 issued by the Forensic Medical Service it appears that "the defendant has bruises, abrasions, and contusions on his head, face, upper limbs, and left posterior thorax, injuries that could have been caused by blows with blunt objects or sharp blunt objects".

Moreover, it was not possible to issue the protection order or to establish the obligation to respect the 300-meter distance requested by the claimant, as this was impossible for the parties to comply with, neighbors in the same building, located two staircases away from each other at an extremely short distance and who also shared the common space typical of a normal neighborhood – a common grocery store, market, etc.

As such, in the case in question, through the interpretation given by Law 26/2024, the court established that what must be proven in such situations is "not only the existence of acts of violence of any kind, but also the danger created by these acts, which must meet the requirement of immediacy, with the attitude and behavior of the parties consisting of serious misconduct" (Civil sentence no. 5363, 5th of September 2025, Galati Court, unpublished).

Including in the appeal lodged by the claimant, the higher court rejected the request to issue a protection order, upholding the decision of the court of first instance, considering also that “beyond this exceptional situation, which must be proven in each individual case, dissatisfaction with the existence of a conflictual situation between the parties cannot implicitly lead to the existence of a state of danger for the claimant”. Therefore, what must be proven is not only the existence of acts of violence of any kind, but also the concrete danger created by these acts, it being necessary that the attitude and behavior of the parties consist of serious misconduct and not of acts that can be interpreted as a degree of violence and actual social danger (Civil decision No. 699/2025, 3th of November 2025, Galați County Court, unpublished).

Conclusions

As can be seen, the legal issues raised by the courts in various cases in which protection orders were granted or rejected are of a different nature – related to evidence, the admissibility of requests, the grounds for requests, etc. While Romanian legislation in recent years has seen some tentative efforts to crack down on such aggressors or harassers, we nevertheless note the serious efforts and proactive attitude of the police and prosecutors, as well as the forensic departments and courts, in terms of their positions, interventions, and speed in applying the law.

However, in practical terms, as shown by statistics held by the Public Prosecutor's Office or published in the Social Monitor, the number of victims is not decreasing, and abusers take advantage of procedural nuances or even the lack of response from victims to perpetuate aggressive behavior that endangers family members and even neighbors, friends, or acquaintances, who sometimes become collateral victims.

All this means, in our opinion, that the penalties established by current legislation for such antisocial acts are not severe enough, with the abusers only facing criminal charges when they violate a protection order. It is therefore necessary to establish a range of restrictive and much harsher penalties (fines, imprisonment), particularly in cases where the aggressor reoffends against the victim or in society in general.

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