

**FAMILY VIOLENCE -  
THEORETICAL AND PRACTICAL ASPECTS**

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**Abstract**

*Romania's integration into the European Union caused a growing preoccupation with the protection of fundamental human rights whereas the fight against family violence became a central topic of the national policy. In this context, both the legislation and strategies adopted in the field have been modified in order to prevent and fight against this serious phenomenon.*

*At both national and local levels, efforts have been made to conceive a series of instruments considered as absolutely necessary for the evaluation of this phenomenon and for the opportune intervention in due time, in order to guarantee better ways of protecting the most vulnerable categories, namely women and children. At the same time, there have been various efforts to incorporate the national legislation within the limits established by the international law in the field and to make the working methods used in the case of family violence meet the current European standards. The emphasis is laid on both the teamwork of the professionals who try to identify, take over and deal with the cases of family violence, but also on all the activities for preventing family violence.*

*The fight against family violence represents also a fight for the protection of children and human rights as they are established in the UN Convention on the rights of the child, the Universal Declaration of Human Rights and the EU Charter of Fundamental Rights.*

**Keywords:** domestic violence, offences pertaining to family violence, fundamental human rights

**1. The family - a sociological and juridical perspective. Family relationships and family violence**

The family represents the object of study of various sciences, such as: law, sociology, history, philosophy, psychology, medical sciences, biology etc. From a sociological point of view, the notion of family designates a group of persons united through marriage, filiation or kinship, characterised by their living together, shared interests and mutual support (Stănoiu, Voinea 1983).

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## **PUBLIC ADMINISTRATION & REGIONAL STUDIES**

**7th Year, No. 1 (13) – 2014**

**Galati University Press, ISSN 2065 -1759**

From a juridical point of view, family represents a group of persons between whom there are rights and obligations generated by marriage, kinship and other relationships which are assimilated with family relationships (I.P.Filipescu, A.I.Filipescu 2006).

Between the members of the family, relationships should be governed by respect and mutual support and not by violence or abuse. Unfortunately, family violence is a phenomenon of great amplitude which is insufficiently known because of the victims' reluctance to report to the public authorities when violence occurs or because of the fact that these actions are considered legitimate in certain circumstances. At the same time, the victim's lack of reaction is caused either by their lack of financial means that would allow the victim to lead an independent life, or by their fear and even shame of being stigmatized by the rest of the community. Another common cause which prevents victims from reporting to the authorities is their ignorance with respect to the law in the field. There are many cases in which victims do not know anything about the legislation or about the available social services they can benefit from.

The number of cases of family violence registered and centralised by the Ministry of Labour, Family and Social Protection does not account for the real dimensions of this phenomenon, because these numbers represent only the cases that have been reported and registered by the local authorities. The CURS opinion poll conducted in 2008 shows that over 1,2 million of Romanian women are victims of family violence each year; less than 1% are included in official statistics as a result of their pressing charges against the aggressor. It is proved that in 45% of the Romanian families there is a risk of violence against minors and in 10% of these various forms of abuse take place against minors. A form of family violence of major importance is the one against children and this form has been on the increase in the past years.

Family violence is defined by special law as "any deliberate action or inaction, with the exception of self defence or defence actions, manifested physically or verbally by a family member against another member of the same family, which may determine or may cause a harm or any other physical, psychological, sexual, emotional suffering, including the threat of performing these acts, the constraint or arbitrary deprivation of freedom". It is considered a form of family violence, too, the attempt at preventing the woman from exercising her fundamental rights and liberties.

In order to prevent family violence and other situations that represent violations of the victims' fundamental rights, the local administration authorities have the obligation to take all necessary measures in order to elaborate action strategies in this field and to ensure

the needed resources for their putting into practice. The implementation of these plans is made by the creation of specialised services which must have a constant preoccupation for the prevention of the phenomenon and for the counselling activities and the assistance of the victims and of the aggressor through a well trained specialised staff.

Besides the local public administration staff involved in the prevention and fight against family violence (social workers, psychologists, jurists), the staff of other public institutions as well must take action when they find out about family violence acts or notice any signs of such acts. Thus, teachers who observe signs of child abuse must promptly report any suspicion of it to the nearest office of social services, usually the social worker of the administrative-territorial unit, or the nearest police department. At the same time, employees of medical units who notice signs of child or adult abuse have to report to the General Direction for Social Assistance and Child Protection. This institution will start investigations and will ask the support of other public authorities that may help in solving the case (the police, the mayor's office etc.) If necessary, the victims of family violence will be assisted in the sense of taking them out of the environment where they are in danger in order to be hosted in a specialised shelter for the victims of family violence. The police's involvement in the confirmation of the reports of family violence and the application of legal sanctions to the aggressors are very important. Close cooperation of various specialists from all institutions concerned is essential for the correct preparation of the case. Another major element is represented by the judge who has to decide urgently upon applications of the victims of family violence, on the basis of evidence which are most of the time not convincing enough. In this context, the prevention of family violence becomes a priority and includes the promotion of relationship models based on gender equality. An important necessary step should be taken by the introduction in the national legislation of concrete references to measures and actions meant to ensure adequate protection to women, children and elderly which have to cope with violence within their families, these persons representing in fact the social categories with a high degree of vulnerability.

## **2. Theoretical and Practical Aspects of Family Violence at Present**

The fight against family violence finds itself a place within the paradigm of the protection of human and child fundamental rights, as they are recognized in the UN Convention on the rights of the child, the Universal Declaration of Human Rights, the EU Charter of Fundamental Rights.

There are many international recommendations based on cases that have been dealt with by international courts of justice, which consider that family violence is a major topic of all practices and policies regarding the public health and the fight against discrimination. For instance, the Convention on preventing and combating violence against women and domestic violence, adopted on 11 May 2011 in Istanbul, within the Council of Europe, reiterates the recommendation to consolidate the policy for the prevention and fight against all forms of family violence. This consolidation has to be done especially through a better coordination at the highest level and the elaboration of a new solid multiannual strategy to prevent and punish family violence acts.

The national strategy should be a major concern of the executive, legislative and judicial powers, of the academic environment, as well as of local public administration authorities and civil society, and it should take into consideration the following aspects:

- Women are the most affected by family violence.
- Violence against women is favoured by the imbalanced power relations between men and women, which lead to the domination and discrimination of women.
- Children are affected by family violence even when violence is not directly targeted against them, but they are witnesses of violence.
- The European standard for the services available to the victims requires the existence of a shelter for every 10.000 inhabitants.

Family violence issues and violence against women in particular are a constant preoccupation of the EU institutions, a fact that is proved by the numerous documents elaborated and adopted at this level, documents that point out that gender-based violence is predominantly targeted towards women.

Since violence against women includes a wide range of violations of the human rights, the European Parliament by its Resolution of 5th April 2011 on priorities and outline of a new EU policy framework to fight violence against women brings to the fore a new **perspective of the global politics on gender-based violence**. The main points are the following:

- the elaboration and adoption of a new directive against gender-based violence;
- the establishment of a European charter formulating a minimum level of assistance services to be offered to victims of violence against women, such as: the right to legal aid; the creation of shelters to meet victims needs for protection and temporary accommodation; urgent psychological aid services to be provided free of charge by specialists; financial aid arrangements aimed at promoting victims' independence and facilitating their return to normal life and work;

- training for all professionals involved in the prevention and combat of violence against women with the aim to promptly and correctly apply all measures set up by national legislations;
- the creation of partnerships with higher education institutions with a view to providing training courses on gender-based violence for professionals such as judges, criminal police officials, health and education professionals and victim support staff;
- the creation of solid partnerships with the relevant NGOs which provide shelter for the victims of domestic violence etc.

The same resolution highlights that exposure to physical, sexual or psychological violence and abuse taking place between parents and other family members have serious consequences on children. This reality demands that each state conceive a legal framework for the benefit of the victims who should have easy access to the counselling services adjusted to their age with the main goal of helping children to cope with traumatic experiences within family.

The resolution also emphasises that research into the area of violence against children, young people and women has to be included as a multidisciplinary research theme in the Eighth Framework Programme for Research and Technological Development, 2014-2020. It calls on the EU Fundamental Rights Agency and the European Institute for Gender Equality to carry out research which examines the magnitude of violence in teenage relationships and the impact this has on their welfare. The resolution shows that state members should devote appropriate resources to prevent and combat violence against women, including the appeal to the Structural funds. It is considered as necessary that the authorities in member states should take action to facilitate the return to the labour market of women who have been victims of gender-based violence through instruments such as The European Social Fund or the Progress Programme.

Besides, on the official website of the Ministry of Labour, Family, Social Protection and Elderly of the Romanian Government, in the document entitled **A Socio-Economic Analysis for the 2014-2020 Structural Funds Programming**, victims of family violence are one of the target groups considered eligible for the programming of the 2014-2020 European Funds. In fact, at a national level, issues related to family violence are the subject of many legislative acts. Law no. 217/2003 on preventing and fighting family violence is the framework law that establishes the fundamental principles and modes of action in all cases of family violence.

Government Decision no. 1156/2012 has established and approved the 2013-2017 National Strategy on preventing and combating the phenomenon of family violence and the Operational Plan on implementing

the 2013-2017 National Strategy on preventing and combating the phenomenon of family violence. The Strategy promotes good practices in this domain and useful tools for all those who are in direct contact with the victims and their aggressors in the family, namely specialists in various fields such as social protection, local administration, justice, health, education, in order to ensure a common action plan providing measures meant to reintegrate persons affected by family violence and the rehabilitation of the aggressor.

For the years 2013-2017, the Ministry of Labour, Family, Social Protection and Elderly of the Romanian Government has proposed the several courses of action:

- The development of the capacity of the local administration' authorities to intervene in the preventing and fighting against family violence;
- The implementation at a national level of a unique specialized data collection system for the registration, reporting and management of the cases of family violence;
- The increase of efficiency in fighting the crimes of family violence;
- The encouragement of specialized institutions to carry out joint programmes for preventing and combating family violence;
- Continuing education and training for professionals activating in the field of family violence (social worker, policeman, doctor, psychologist, prosecutor, judge etc.);
- The recovery of the victim and/or the aggressor by complementary and integrated activities of information, counselling, psychotherapy and other forms of alternative therapies, with the aim of increasing their autonomy and raising their awareness of the social values of the individual, of enhancing their sense of responsibility and the power to regain social abilities;
- The constant effort to finance the establishment of new units for preventing and combating family violence.

A very important aspect of the procedure in the cases of family violence is that the woman who is a victim of family violence has the right to ask the Court to issue a protection order. According to the current provisions of the law, the person, whose life, physical or psychological integrity or freedom is put in danger because of another family member's violent act, has the legal possibility to request the Court to issue a protection order to put an end to the state of danger. By the protection order, the Court can establish temporarily one or more of the following measures, obligations or interdictions:

- a) the temporary eviction of the aggressor from the family home, regardless of the fact that the aggressor is the titulary of the right of property;

**PUBLIC ADMINISTRATION & REGIONAL STUDIES**

7th Year, No. 1 (13) – 2014

Galati University Press, ISSN 2065 -1759

- b) the reintegration of the victim, and if possible, of the children, in the family home;
- c) limitation of the aggressor's right of use of one part of the common residence only when it can be partitioned, so that the aggressor will not come in contact with the victim;
- d) the obligation of the aggressor to keep a specific minimum distance in relation to the victim, her children or to her relatives or to the house, working place, or place of education of the protected person;
- e) forbidding the aggressor to go to certain localities or determined areas visited or frequented periodically by the protected person;
- f) the interdiction of any contact, including by telephone, correspondence or any other way of communication with the victim;
- g) forcing the aggressor to hand over all possessed weapons;
- h) setting custody for minor children and the establishment of a new residence for them.

The Court can also decide that the aggressor has to pay the rent and/or the maintenance expenses for the temporary residence where the victim, the minor children and other family members live or are about to live because of the impossibility to stay in the family home. The Court can force the aggressor to be subjected to psychological counselling, psychotherapy or can recommend a series of control measures, special medical care or other forms of cure, with the specific aim of disintoxication. The duration of the measures taken through the protection order is decided by the judge, but it cannot surpass 6 months from the issuing of the protection order.

The competent court to issue a protection order is the law court situated in the territorial area of the victim's place of residence. The request can be introduced by the victim or their legal representative. The request can be made on behalf of the victim and with her agreement, by any of the following bodies: the prosecutor, a representative of the authority competent in the field of family violence at the level of the administrative unit, the representative of any of the providers of social services in the domain of preventing and combating family violence, officially recognized by the law.

The request for the protection order is drawn up according to the specific request form established by law and is exempt from the legal stamp tax. The procedure to issue a protection order is performed with celerity, in the council chamber, and the prosecutor's participation is compulsory. In case of great emergency, the court can issue the protection order on that same day, ruling on the basis of the request and the papers, without the conclusions of the parties. The pronouncement may be postponed by 24 hours at most and the motivation of the protection order

will be done in at most 48 hours from the pronouncement. The protective order is executory. When the protection order expires, the protected person can require another order, if there is certain evidence that the life, physical or psychological integrity or freedom of the victim are in danger.

Mention must be made that the family violence is also incriminated by the Romanian Penal Code that stipulates the increase of the maximum of sanctions established by law in the case of a series of crimes against life, physical integrity and health.

The analysis of the 2013 statistics concerning the family violence victims in Galati county shows that in this county only, approximately 550 cases of family violence have been reported over the course of one year. Most of these cases involved children who were either abused by other family members or witnessed violence acts in the family. However, the number of the places in the shelter centres is far from satisfactory: there are only 20 places available in a shelter that was created by a public-private partnership in the city of Galati. In 2013, only 100 women could benefit from the services offered by the shelter for family violence victims.

It is important to note that victims may receive psychological counselling.

The disadvantage would be that only those victims who have financial resources would be able to go to the specialised institutions offering psychological assistance that are situated in cities like Galati, Tecuci and Targu Bujor. At a local level, there are few local authorities that hired specialised staff able to assist the victims of family violence. The insufficient financial resources hinder the capacity of the local authorities to establish and sustain centres for the support of family violence victims or shelters that may offer temporary hosting for these victims.

### **3. Conclusions**

Family violence represents one of the most serious problems of the contemporary society at both international and national levels including Romania.

Despite the fact that the family violence and the violence against women has been a subject of debate over the past decades, the international community has not yet succeeded in ending this form of violence that proves to be extremely destructive. Family violence is a very complex problem that involves the protection of the victim's personal integrity and of their common social interests, like freedom and democracy.

Gender-based violence does prejudice to the democracy itself, given the fact that the women subjected to violence have significantly reduced chances to take part in a fulfilled social and professional life, because in

their case the life within their family does not offer them the security and support they need.

It is remarkable that at both international and national levels, there is a constant preoccupation with the prevention of this phenomenon and the protection of the human fundamental rights, in particular the rights of the most vulnerable categories: children, women and elderly. Because of the current context of the economic crisis, the state is not able to provide the resources necessary to create the specialised services for the victims of family violence. There are not enough places in the shelter centres for the victims of family violence and the specialised staff is not large enough to ensure a prompt intervention in all cases and at the right moment. But it is hoped that by the cooperation between all the professional categories mentioned above most of the cases of family violence can be properly investigated and solved.

At the same time, it may be pointed out that the social protection system, and the especially the family violence protection system is unevenly developed in urban and rural environments. The involvement of the local public authorities in the organization of this system is only occasional, these authorities playing an active role only in municipalities and cities. The capacity of the local authorities to hire and maintain specialized staff within the social assistance services is reduced. At the community level, the system of communication and cooperation between institutions is underdeveloped, and the institutional intervention is not preventive or at least ahead of time, from the first signs of violence.

Another negative aspect is that in most cases the social reinsertion of a woman or other members of the family who have been victims of family violence is not possible and that causes them to go back in the environment from which they were initially taken out. In most of these cases the perpetrator of violence will repeat his acts.

It is obvious that, in these cases, the fundamental rights of the victims, such as the right to life, to physical and psychological integrity, the individual freedom, the liberty of expression, the equality between men and women, the right to education and to the protection of health, are violated.

That is why it is necessary to analyse the situation of the vulnerable persons, of their needs and of their resources, and the information obtained has to be used in order to conceive a series of strategies and programs meant to limit their dependence upon the state services and to facilitate their social reinsertion with their own resources. This would also contribute to the limitation of the phenomenon of family violence, the adult victims having the possibility to find a job and to go on with their life in conditions of security and stability.

We also think that the national legislative framework can be improved by a consultation with the personnel who ensures the investigation of the cases of family violence and which may offer pertinent opinions about the advantages and disadvantages of the current system.

As a result of the experience gained in the activity of social assistance, and in particular in the activity of protection of the victims of family violence, we make the following remarks and propositions to improve the legal provisions in place at present:

- The time of 6 months established in the protective order for the protection measures is, in our opinion, too short, and the prolongation of this period by way of legal action is most of the time too difficult for the victim to obtain, mainly because of the lack of financial resources that women deal with in most of these situations. The period of time over which these protection measures should be applicable should be at least of 1 year, with the possibility to be extended by another year. The prolongation of the current provided period would increase the victims' chances to social reinsertion and would offer greater protection for the children and elderly who usually live in these families.
- According to the current regulations, as already said in the article, the court can force the aggressor to attend psychological counselling, psychotherapy, or other forms of cure or treatment, especially for disintoxication purposes. We consider that at least one of these measures should be taken, in each case, in order to prevent the aggressor from recidivation. The psychological counselling and the disintoxication are all the more important, especially when the aggressor is drug or alcohol addicted. At the level of each General Directorate of Social Assistance and Child Protection there is a specialised compartment for the cases of family violence in which psychologists are specially trained and employed to offer psychological counselling free of charge for both victims and aggressors. It is also known that in each psychiatry hospital there are sections that provide medical services of disintoxication free of charge.

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**Galati University Press, ISSN 2065 -1759**

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