

# THE CRIME OF DOMESTIC VIOLENCE. ASPECTS OF COMPARATIVE LAW

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## **Abstract**

*Domestic violence is a set of actions that raise several questions about their legal nature, giving rise to theoretical disputes that have been quite insistent. Domestic violence being one of the most widespread crimes, imposes a certain degree of tolerance towards this anomaly, indicating it as a normal fact that throughout history has always been with cultural development. This crime is based on traditions, customs and mentalities where the superiority of the man over the woman is accentuated. It is any harmful, emotional, physical act that takes place between family members. It is an abusive behavior, intentionally determined to demonstrate power and supremacy, but also to affect the emotional, physical state of the victim through humiliation, total control or damage to integrity. The topic brought to attention proposes the analysis of domestic violence from the point of view of the criminal side, as an anomaly, a crime that tends to achieve perhaps the most important social value, the family, as a social cell, but also from a historical perspective in terms of historical culture and trends. human beings that have had a wide evolution during different historical periods, but also in general aspect as an element that is transmitted from generation to generation.*

**Keywords:** domestic violence, crime, victim, legal nature, harmful act.

**JEL Classification:** K14, K33

## **1. Introduction**

Domestic violence, called domestic violence, is a global problem that exists in every state of the world, but which is disguised and camouflaged by the misrepresentation of the traditional role of men and women in family and society. Analyzing the current numbers of cases of domestic violence, sociologists are tempted to explain domestic violence through the socio-cultural traditions of society. But it is clear that domestic violence stems from a lack of culture, family and social values. Thus, Ainsworth and Bowlby developed the theory of attachment, which assumes that parents who use domestic violence have been victims of domestic violence by their parents.

We consider intra-family aggression as a relational pathology, a deviant behavior, and the socio-legal, economic, medical-biological implications require intra-family heteroaggression to become a problem of major importance in today's society. At the time of the appearance of the first civilizations and in the historical evolution of mankind, the conflicting values, armed, first between clans, tribes, nations, but which in itself mask a much more important danger, the struggle in families, were accentuated.

Although domestic violence is not a new topic of approach, being often examined by both sociologists and psychologists, we consider it important to dedicate this paper to this topic, so that the approach itself involves a set of individual operations necessary for multispective examination.

The multitude of approaches to the concept of contemporary violence can be limited to two extreme positions:

1. Violence is a tendency to subjugate others, to carry out authoritarian social activities, to be a leader;
2. Violence is a series of actions that cause pain, damage and suffering to others.

Therefore, we conclude that violent behavior is directed both against a particular subject and against the self. In this sense, it is necessary to differentiate between self-aggressive behavior that manifests itself in various forms, the most serious being suicide, but also through actions that endanger the health and balance of the body, such as: smoking, drug or alcohol abuse, face of those committed in order to harm a specific subject. The essential element that differentiates these aspects of course is the will that can be determined by self-mutilation or the application of blows to an individual.

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Dogmatic ideology cannot consider violence as a virtue, because virtue presupposed positive qualities such as love for one's neighbor, which excludes in itself any violent actions. Violence is the aggression of the neighbor, in most cases without reasoning or any specific reason. It represents a lack of mastery in deeds or words, an embodiment of evil sustained by a sense of domination and strength. Being in the empire of force and domination, the individual behaves aggressively in the environment that he cannot do without, this being the family environment in which he lives.

## 2. Domestic violence - a historical phenomenon

Domestic violence or domestic violence is a universal phenomenon that is present everywhere, from the largest cities to the smallest settlements, from the most developed countries in the world to the developing ones. Domestic violence is not an insignificant phenomenon, nor is it a myth. We can hear about it every day in the media, sometimes we feel it on our own skin, it penetrates through the too thin walls of houses or apartments in blocks of flats, as a cruel reality that some never accept, remaining with some unfulfilled expectations, and others making every effort to control it to a small extent.

Human existence is conceptually linked to social relations. Thus, in accordance with the historical evolution of mankind, as well as of the organizations of the members of the community, the social relations evolved in a constant process until they reached a maximum threshold of complexity.

In this evolutionary process of society, the nucleus or cell that is the most enduring form of community for all stages of historical development of mankind is the family. Being as a social structure a complex of social, biological, material and spiritual relations, it has a great stability for people who are bound by blood, marriage or adoption<sup>2</sup>. As a result, this social phenomenon develops and changes with social development.

Being the environment where the most intense feelings are manifested and formed, as well as the complex personality of man, the family is at the same time a set of those factors that intervene in the family environment and tense or shake the harmony of these social relationships with a unique connection.

In the context of modern life, the family is moving away from that traditional pattern that once appeared in human history, but it remains stable that it is a generator of tensions, with family members showing certain qualities that put some resistance to these tensions.

The lack of official statistics until recently, which shows the real number of cases that have caused varying degrees of bodily harm among family members, can be misleading, in that it makes it appear that this phenomenon is specific only to our period.

Thus, a historical approach to the evolution of society can shed light on the roots of domestic violence that are much deeper, can be identified in the Roman period, having a continuation in the Middle Ages and gradually reaching a peak in modern and contemporary times.

The Romans defined the role of women in the family as a support for the one who had the central role, called *pater familias*. To indicate the power of the husband over the wife and the power of the *pater familias* over the daughter, the Romans used the expression "*manus*". The role of women in Roman society was similar to that of Greek women:

- as a girl she obeyed her father, and after his death, she came under the power of her father's brothers and relatives.
- as a married woman she obeyed her husband under his guardianship, and in case of his death she could not return to her family of origin because through marriage, she gave up her old family forever.

The power of the husband in those days was so great that the husband could choose a new husband for his wife, or appoint a guardian.

As a consequence of this obedience to her husband, her wife could not appear in court even

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<sup>2</sup> Mihailescu, C. Zamfir, L. Vlasceanu, "*Dictionar de sociologie*", Ed. Babel, Bucharest, 1993, p. 239.

as a witness. Being under the power of her husband or father, the woman could not claim anything in court. As for the access to justice of the wife or daughter, it was a private one, where only the *pater familias* participated, the judge being the head of the family. His power was so absolute that he could be sentenced to death, and none of the authorities could change his mind.

Only since the first century AD can we talk about a certain emancipation, where the Roman woman, being superior to the woman of Greek origin in terms of rights, becomes even more respected in society. Her rights reached the possibility of shopping or visiting on her own, and she could even accompany her husband to parties.

Towards the end of the Roman Republic, the mother was formally granted the right to respect her children on an equal footing with their father, and during Hadrian's tenure, women's rights increased considerably, as they no longer needed a guardian to draw up a will, and their daughters they still had to marry against their will.

With the advent of these rights, women began to circumvent the primary obligations imposed on the household and maternal debts in order to enjoy all the opportunities once forbidden for this sex. To this we can add the violation of fidelity, the number being increasing among women.

After the disappearance of the Roman Empire, the tendency to grant men the right to life and death over women continued, and in the Middle Ages men beat their wives, even more, they administered women's wealth and forbade their education and public discourse.

As the Middle Ages were one of the most cruel periods in terms of domestic violence, it was also characterized by the right of the husband to educate his wife. So that this right was not interpreted in one way or another, it left a wide margin of cruelty to punish his wife<sup>3</sup>.

The attitude towards the woman through which she was granted the role of childminder and for the satisfaction of the man's demands crossed the whole period of the Middle Ages. So that the patriarchy was omnipotent, the woman was seen as an object, which required a permanent and severe control, exercised by beating.

In France, the first duty of the head of the household was to watch over, to punish, or even to kill, if necessary, his own wife, daughters and sisters, orphaned daughters of brothers, widows of brothers, and cousins and vassals.

However, these aspects describe the general situation of the Middle Ages, but in some regions such as Tuscany, on the contrary, the discipline and respect for women and children was emphasized. At the same time, some time ago, society was convinced that women should be beaten, whether they were hardworking or not, and children should be beaten often, but not hard<sup>4</sup>.

In noble families, especially in European countries, domestic violence has become commonplace, so it has been concluded that women should be beaten as a form of prophylaxis.

Towards the Modern Age, the authority of men over women has not diminished, the principle of educating women by men still being applied. The enlightened minds justified these actions as correcting the misconduct of the woman in society, the active legislation at that time considered it reasonable to allow the husband to extinguish the inappropriate attitude of the wife, applying to her the domestic punishment of the same intensity as a man would control his subordinates.<sup>5</sup>

During the sociological development, mankind doubted that such measures were welcome and that man's power over woman made her stay with him. Even more so, the rate of leaving the subordination of the man who chose the life of a fugitive was higher than the torments of domestic education. When the leaders of the feminist movements revealed the intensity of the injuries and their level, the liberation movement of the woman subjected to the hidden quarrel for the educational purpose of the man was accentuated. The phenomenon of domestic violence has continued to develop, reaching worrying levels for the safety of family life, social life, but also for the balance and safety of women in general.

The contemporary era at first glance records many more cases of domestic violence than in

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<sup>3</sup> Turliuc M.N., Adina K.H., Oana D., *Violența în familie. Teorii, particularități și intervenții specifice*, „Alexandru Ioan Cuza”, Iași, 2009, p. 28.

<sup>4</sup> Ibidem.

<sup>5</sup> Ibidem.

other historical periods, hence the rhetorical question: whether human rights and freedoms are respected and society has evolved so that the rate of domestic violence should be as an anomaly phenomenon, why not decrease the number of cases of domestic violence?

In the foreground we must emphasize that the statistical data have recently begun to be compiled in this way, if the figures concern us today we can say that the number of cases of domestic violence as a phenomenon has decreased considerably, but neither in the Middle Ages or the Modern era considering this phenomenon which does not allow the identification of a number even with approximately cases of domestic violence.

So, in principle, the situation of domestic violence throughout history is a drastic one, so that until the modern era, power was the most valuable index. In antiquity and the Middle Ages, power was the index that established the leader or leader, so the phenomenon of applying this power to family members was considered a moment of education. This phenomenon was followed in the modern era but with the modernization of society and cultural values, the importance of women and children increased, so the power even if not applied, it was the shadow of its development as a totem of justice for the one who owned.

Thus, the modernization of society has led to the fact that society has begun to respect the rights of women and men in general, but if in general domestic violence has decreased considerably, its index is still high, and by the early 2000s it was even in progress. .

We consider that with the social development, the new forms of domestic violence have become more and more popular, which are becoming more and more popular. victims, and the consequences are sometimes more terrible than in the case of physical violence.

### **3. Constitutive elements of domestic violence according to criminal law**

#### **3.1. Legal-criminal analysis of domestic violence according to the Romanian Criminal Code**

An extensive United Nations study (Global Study on Homicide. Gender-related killing of women and girls, 2019) shows that in Romania, last year, 20,000 women were hit in their homes and that 44 died as a result of beatings. Also, 30% of Romanian women admitted that they were affected by physical or sexual violence at some point in their lives.<sup>6</sup>

The constitutive elements of the crime of domestic violence that we will examine both in terms of the old provisions and in terms of new changes.

The constitutive elements of the crime of domestic violence are:

- the subject of the crime;
- the object of the crime;
- the objective side of the crime;
- the subjective side of the crime.

The subject of the crime is the aggressor who, according to the old Criminal Code of Romania, must have the quality of family member. This aspect concisely explains the family connection formed by the generally known norms of the Family Code, but the new changes widened the circle of people. Law on preventing and combating domestic violence no. 217 of May 22, 2003<sup>7</sup>, establishes as a subject of domestic violence ex-spouses, current partners or cohabitants, but also ex-spouses or partners.

Thus, we consider the widening of the circle of subjects an opportune one because these changes include in themselves the potential situations that are not subject to marriage as it was before, but also cohabitation and even after divorce.

The material object of the crime of domestic violence is the body of the person, the victim.

The subjective side of the crime of domestic violence in one of the criminal ways is

<sup>6</sup> Hotcă M.A., *Protecția victimelor. Elemente de victimologie*, Ed. C.H. Beck, Bucharest, 2006, p. 88.

<sup>7</sup> Law no. 217 of May 22, 2003, regarding the prevention and combating of domestic violence, republished in the Official Gazette no. 948 of 15.10.2020.

characterized, first of all, by guilt in the form of direct or indirect intent. In this sense, domestic violence involves the manifestation of intent in relation to any of the harmful consequences that it entails. Thus, at the time of the commission of the examined offenses, the perpetrator must know or admit that he is a member of the victim's family and to pursue the commission of the crime not on anyone but on the person having that special quality. If the perpetrator rightly considers that the victim does not have the status of a family member, his/her liability cannot be applied based on the legal provisions of the crime of domestic violence<sup>8</sup>. Therefore, the perpetrator will be liable on the basis of the articles providing for criminal liability for offenses against the life or health of the person.

The objective side consists of the forms of action chosen by the aggressor. The Romanian Criminal Code (C. Pen.) establishes the following potential actions: homicide, aggravated murder, hitting or other violence against the person, bodily injury or fatal blows or injuries, so it involves several aspects depending on the consequences of the blows.

The aspects we refer to are stipulated in art. 199 Criminal Code of Romania where it is established: „The act of murder (art. 188 C. Pen.), aggravated murder (art. 189 C. Pen.), hitting or other violence (art. 193 C. Pen.), bodily injury (art. 194 C. pen.) or blows or injuries causing death (art. 195 C. pen.) committed against a family member”.

In the case of the offenses provided in art. 193 and in art. 196 committed against a family member, the criminal action can be initiated *ex officio*<sup>9</sup>, so we note that attention is drawn to all forms of hitting or bodily injury, as well as the injury of bodily integrity through fault, which can start the criminal process *ex officio*.

Regarding the phrase "*reconciliation removes criminal liability*", included by the legislator in para. 2, by Decision no. 11/RIL/2019, the supreme court showed that “for the crime of hitting or other violence committed against a family member provided by art. 193 referred to in art. 199 paragraph (1) of the Penal Code, when the criminal action was initiated upon the prior complaint of the injured person, the termination of the criminal proceedings may be ordered only as an effect of the withdrawal of the preliminary complaint and not as an effect of reconciliation”. When the criminal action has been initiated *ex officio*, the termination of the criminal proceedings is ordered as an effect of the reconciliation, considering that the conditions provided by art. 159 para. 1 C. Pen.<sup>10</sup>

We consider it beneficial that the phrase "*reconciliation removes criminal liability*" should be excluded from this article, as criminal cases related to the crime of domestic violence are often influenced by the perpetrator who convinces his victim to withdraw his criminal complaint, but in most cases acts of domestic violence do not stop.

### 3.2. Legal-criminal analysis of art. 201/1 Criminal Code of the Republic of Moldova

It is obvious that in the context of the discussion about the legal-criminal analysis of any crime, it is necessary to analyze the constitutive elements of the crime, more specifically:

- the subject of the crime;
- the object of the crime;
- the objective side of the crime;
- the subjective side of the crime.

The subject of the crime - is the aggressor, who from the above discussed must be a family member, in the full sense of the provisions of the Criminal Code. In other words, only the position of family member differentiates this crime from the others, or the subject is one with a special status (theoretically speaking). But we would add that, in order to be held accountable for his deed, the subject must have the general circumstances established by the legislator in art. 21 Criminal Code (CP RM), for natural persons.

In par. (1) art. 201<sup>1</sup> CP RM describes a conflict between family members. So this conflict can

<sup>8</sup> Branza S., Stati V., *Infractiuni de violenta in familie (art. 201/1 CP RM) in lumina prevederilor Legii nr. 196/2016*, Studia Universitatis Moldaviae, Seria „Științe Sociale”, no. 8(108)/2017, p. 47-56.

<sup>9</sup> Criminal Code of Romania, no. 286 of July 17, 2009. Published in the Official Gazette of July 24, 2009.

<sup>10</sup> Udriou M., *Fise de drept penal. Partea speciala, Teorie si cazuri practice*, Ed. C.H. Beck, Bucharest, 2020, p. 66.

be seen in two ways: between two adult family members or between the adult family member on the one hand, and a minor family member on the other.

In the legal-criminal sense, domestic violence can consist of any physical or verbal action committed only intentionally by a family member against another member of the same family, but in this regard we are obliged to draw attention to the fact that the crime may be committed and by inaction, which causes harm to the health or death of the victim.<sup>11</sup>

The main legal object of the criminal act of domestic violence provided in para. (1) art.201<sup>1</sup> CP RM are the social relations regarding solidarity and family security. We emphasize both aspects, or this crime also affects the security of the family itself, not just its solifarity. An indispensable component of family solidarity is parental love, and the interaction of family members is based on relationships of empathy and forgiveness. Lack of affection or poor expression of the child leads to emotional deprivation of the child, neglecting his emotional and communication needs. In other words, it is an example of inaction that underlies acts of domestic violence.<sup>12</sup>

The secondary legal object varies according to the letter or paragraph of the article and is the social relations regarding the bodily integrity, health, physical or mental integrity, honor and dignity of the person. This includes social relations regarding the dignity of the family member, social relations regarding the bodily integrity and health of the family member. Thus, the secondary legal object is the social relations regarding: the health of the person and the physical or mental integrity of the person - in case of abuse, the physical freedom of the person in case of isolation or mental freedom of the person in case of intimidation in order to impose the will or personal control over the victim, but also the health of the person.<sup>13</sup>

The material object of the offenses provided in par. (1), (2), (3) and (4) art. 201<sup>1</sup> CP RM is represented by the person's body. The exception is the criminal act of domestic violence in the manner provided in letter b) para. (1) art. 201<sup>1</sup> CP RM, because such influences occur on the person's psyche, and not on the body. Also, as material object of the crime in question may appear movable or immovable property belonging to the victim, which is stolen, destroyed, damaged, which in itself is the form of economic violence of a family member.<sup>14</sup>

The subjective side of the crime of domestic violence in one of the criminal modalities provided in par. (1) art. 201<sup>1</sup> CP RM is characterized, first of all, by guilt in the form of direct or indirect intent. In this sense, domestic violence involves the manifestation of intent in relation to any of the harmful consequences that it entails. Thus, at the time of the commission of the examined offenses, the perpetrator must know or admit that he is a member of the victim's family and to pursue the commission of the crime not on anyone but on the person having that special quality. If the perpetrator rightly considers that the victim does not have the quality of family member, the liability cannot be applied to him based on par. (1), (2), (3) or (4) art. 201<sup>1</sup> CP RM. Therefore, the perpetrator will be liable under the articles providing for criminal liability for crimes against life or health of the person.<sup>15</sup>

The objective side - is the very form chosen by the aggressor in carrying out criminal actions. Thus, if we refer to the definition given above where we have gradually analyzed each of the forms by which the aggressor can act, we identify the actions or inactions undertaken by the aggressor. These can be hitting, cutting, pushing, strangling, burning, hair pulling (physical violence), non-consensual sexual acts (sexual violence), insults, blaming, swearing, threatening, intentional destruction of objects, or destructive criticism psychological violence), limitation to a certain way of life (spiritual violence), depriving the person of sources of subsistence both economic and food or medicine, prohibition of possession or use of their own objects (economic violence).

The methods, tools and means applied to the commission of the crime provided in par. (1) art.

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<sup>11</sup> Gladchi Gh., *Victimologia și prevenirea infracțiunilor*, Academia MAI al RM „Ștefancel Mare”, Chișinău 2004, p. 17.

<sup>12</sup> Brinză S., Stati V., *Răspunderea penală pentru infracțiunea de violență în familie (art.201<sup>1</sup> CPRM)*, „Revista Națională de Drept” 134 (10-11), 2011, p. 14.

<sup>13</sup> Branza S., Stati V., *op. cit.*, 2017, p. 48.

<sup>14</sup> Hogaș D. L., *Prevenirea și sancționarea violenței domestice prin normele dreptului penal*, Ed. Lumen, Iași, 2010, p. 78.

<sup>15</sup> Corcea N., *Latura subiectivă a violenței în familie prevăzute la alin. 1 art. 201<sup>1</sup> CP RM*, „Revista Nationala de Drept”, Chisinau, no. 7, 2015, p. 53-57.

201<sup>1</sup> CP RM have no relevance to the qualification of the deed, but can be taken into account when individualizing the punishment. At the same time, it has been shown in forensic medicine abroad that family aggressors prefer to attack the victim's face, because the face is associated with the symbolic nature of humiliation and the aggressor's intention to damage the woman's beauty. A much-discussed topic is the line between the application of blows or even the beating to which the minor is subjected in the family and the right to correction, where the beating is seen as a form of discipline of children. Thus, we are reminded of the considerations regarding the possibility of using physical violence as a form of correction of a person, especially children.

According to the general principles of law, the one who has the duty to raise and educate must also have the necessary authority conferred by the right of sanction so that his efforts and efforts are not illusory. "Subjecting the tree when it is young" is one of the most deeply rooted cultural beliefs, which justifies, even today (and not only in Moldova), the use of abuse as a form of discipline of children. Although no court would convict a parent who teases a child who commits disorderly conduct in the family or behaves violently with his or her colleagues, the beating will certainly become an act of aggression when it has consequences physical injuries, mental trauma or even the death of a minor<sup>16</sup>.

### 3.3. Comparative aspects of the two criminal laws

We consider that the article from C. pen of Romania is too laconic without giving a complete definition as it is made in Law no. 217 of May 22, 2003, on preventing and combating domestic violence. We also draw attention to the fact that the Romanian Penal Code is a blanket rule and is not directly linked to Law no. 217 of 22 May 2003 on the prevention and combating of domestic violence, which does not allow the strict determination of all provisions relating to domestic violence.

Comparatively, the norm provided in C. pen. of the Republic of Moldova explains all aspects related to domestic violence, including the ways in which it can be exercised, such as physical, mental and sexual violence. Thus in art. 201<sup>1</sup> C. pen. of the Republic of Moldova, the legislator defines the crime as: "the intentional action or inaction committed by a family member in relation to another family member, manifested by:

- a) ill-treatment, other violent acts, resulting in minor bodily injury or damage to health;
- b) isolation, intimidation for the purpose of imposing the will or personal control over the victim;
- c) deprivation of economic means, including lack of means of primary existence, neglect, if they have caused the victim a minor injury to bodily integrity or health, shall be punished with unpaid community service from 150 to 180 hours or imprisonment up to at 3 years old".

Another aspect that must be mentioned is the beneficial modification by which it was established in Law no. 217 of May 22, 2003 in Romania, a wider range of people who may be victims of domestic violence, or statistics show that until the changes occurred, the aggressors who cohabited with the victims received a much lesser punishment, including ex-spouses.

In comparison, the Moldovan legislator provided long before in the Criminal Code of the Republic of Moldova these aspects, which reduced the possibility of illegal actions by concubines, which decreased the number of cases of domestic violence in general.

Another aspect that is different in the criminal laws we are analyzing is the criminal punishment that the aggressor can receive for his actions.

In C. pen. of Romania establishes a criminal penalty that increases by a quarter depending on the actions taken by the aggressor. In this sense, performing the mathematical calculations, it is obvious that the maximum punishment that the aggressor can receive for killing the victim is 12.5 years in prison. The provisions of C. pen. of the Republic of Moldova establishes the penalty from 12 to 15 years for the serious bodily injury resulting in the death of the person. The punishment

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<sup>16</sup> Philips R., Knust D., Schmiechen M., *Violența în familie. Moldova*. Minnesota advocates for Human Rights, Minneapolis: Suite 1000, 2000, p. 19.

provided by the Criminal Code of the Republic of Moldova is higher, and in our opinion it is a beneficial one, as the purpose of the criminal punishment is re-education and prevention of similar cases, and in the case of a higher punishment, decreases the tendency to commit a crime.

We note that the existence of differences between criminal laws provides an opportunity to improve the legislative quality of criminal law, which aims to establish an effective legislative framework that aims to reduce crime and protect social values.

#### 4. Aspects of comparative law

The analysis of the field of domestic violence in the legislation of several states allows us to highlight some interesting moments, such as the fact that European states have initiated legislative reforms to prevent and combat this phenomenon. Many other states have followed the example of the Europeans, as a result of which two common points can be identified:

- Domestic violence is considered a crime under criminal law (only 2 European countries - Sweden and Spain - criminalize these acts as specific crimes, and other states such as Germany, Belgium, Turkey, Bulgaria, Austria and the United Kingdom, establish the relationship between the victim and the aggressor as an aggravating circumstance in the qualification of the deed).
- The victim requests and receives protection measures from the state (these measures vary from one state to another, such as in Great Britain and Austria, a restraining order is issued against the aggressor, and in Sweden the state also provides material assistance, such as as a result of these actions, the victim should not be economically dependent on the aggressor).

##### 4.1. Spain

Acts of domestic violence in Spain constitute separate crimes of torture and other assaults on moral integrity, if committed repeatedly. Thus, the Spanish Penal Code indicates that if a person subjects his/her partner or spouse to acts of physical or mental violence, he/she can be punished with imprisonment from 6 months to 3 years. Separate punishments can be added in the case of acts of violence such as personal injury. Moreover, the judge will forbid the aggressor from any contact with the victim or his approach at home. This ban can last for more than 5 years.<sup>17</sup>

The Supreme Court of Spain in 1995 set a precedent that is recognized to date, where in the circumstances of the case were recognized acts of marital rape as a crime. In Spain, the victim does not need to file a complaint to initiate proceedings against the perpetrator. One of the measures taken by the judge is to determine the person who will occupy the family home as long as the procedure for examining domestic violence takes place, these provisions also apply if the persons have filed for divorce. In most cases, the eviction of the family home is applied to the aggressor regardless of whether he has an alternative place of residence, so that the protection of the victim is a more important value.<sup>18</sup>

Victims are also provided with material assistance by the Spanish State if the victim is unable to work for more than 6 months or if the victim does not have social security. If the victim dies as a result of domestic violence, her material rights belong to the indirect victims of violence, in most cases children. These measures are granted following the issuance of the court decision, and the amount is related to the minimum wage in the economy and the financial situation of the victim. This assistance is provided through specialized assistance offices under the Ministry of the Interior of Spain. In addition to those mentioned, the victim can also benefit from a specialized shelter for people who are victims of domestic violence.

If, following the investigation or even at the time of the court's examination, it has been established that the crime of domestic violence has not been committed, the victim has the obligation

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<sup>17</sup> Feldman, C.M., Ridley, C.A., *The Role of Conflict-Based Communication Responses and Outcomes in Male Domestic Violence toward Female Partners*. „Journal of Social and Personal Relationship” 2000, 17, p. 558.

<sup>18</sup> Causeni Law Center, *Domestic Violence in the Republic of Moldova, Judicial Practice and Normative and European Acts*, Chişinău 2014.



to return the amount of assistance received<sup>19</sup>.

#### 4.2. Sweden

In 1998, Sweden was found to have violated the integrity of a woman as a crime, being placed among the offenses against life, liberty or sexual offenses, with the aggravating circumstance of having an intimate relationship. The penalty for this offense is between 6 months and 6 years, determined after examination of all aggravating circumstances such as bodily injury. In Sweden, a separate crime is marital rape, but its finding is difficult to prove.

The criminal trial begins with the complaint of any person who has evidence that acts of domestic violence have been committed, even in the absence of a complaint from the victim. However, in order to issue a restraining order against the aggressor, it is necessary for the victim to file for divorce.

The Swedish state provides an emergency crew from the police station acting in case of emergency, and as for families who are on record for repeated cases of domestic violence, they are given a psychologist who regularly conducts meetings to prevent possible cases in the future. At the request of the victim, he is provided with a bodyguard and the opportunity to change his identity. If the victim leaves home, she is provided with shelter, medical care if necessary legal counseling services.<sup>20</sup>

#### 4.3. United Kingdom

The UK has a special approach to domestic violence. Thus, domestic violence is not a specific crime. When examining such cases, the relationship between the victim and the perpetrator will be taken into account.

In the case of domestic violence, the actions can be classified as harassment, which is a specific crime. Therefore, in the early 1990s, rape within the couple was identified as a crime, and the punishment applied is determined depending on the length of the marriage.

Civil law allows the victim to request a restraining order against the abuser or orders to release the marital home. Moreover, the law allows the victim to apply in court to occupy exclusively the family home. However, the decision depends on various factors, such as the conduct of the parties, the financial resources at their disposal, the length of their cohabitation and, last but not least, the condition of the children as a result of the application of these measures. The restraining orders issued may contain general provisions or, on request, specific provisions, such as a ban on telephoning the victim. The restraining order is valid for 6 months and can only be extended once, when neither partner owns the property. If the home belongs to one of the partners, the court may grant the home to the victim, exclusively but with certain conditions, such as the payment of a certain amount of money to the homeowner, or the imposition of periodic repairs and maintenance of the home.

Depending on the severity of the assault, if the victim's security is at stake, the perpetrator may be arrested immediately, even if no arrest warrant has been issued at that time.

The state provides financial assistance to victims of domestic violence provided that the victim does not live with the aggressor and that he is being prosecuted. Determining the amount of aid depends on the material situation of the family members, but not less than the minimum wage in the economy. Like Sweden, there are specialized units in the UK to monitor the situation of families at risk of repeated domestic violence. In 1997, the Housing Law came into force, which requires local authorities to provide shelter for victims of domestic violence for up to 2 years.<sup>21</sup>

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<sup>19</sup> Ibidem.

<sup>20</sup> Philips R., Knust D., Schmiechen M., *op. cit.*, p. 20.

<sup>21</sup> Causeni Law Center, Domestic Violence in the Republic of Moldova, Judicial Practice and Normative and European Acts, Chişinău 2014.

#### 4.4. Canada

As in the other states listed above, Canada has not established a separate article in criminal law that provides for domestic violence, but for the most part these actions are qualified under articles under sexual assault, sexual harassment and bodily harm. It is important to note that criminal law in the Canadian state provides for a severe penalty for the above-mentioned offenses, such as sexual harassment for a term of 5 to 10 years.

To protect victims of domestic violence, the state has provided protective measures, especially for those who witness domestic violence, so that emphasis is placed on a safe process for its participants. As in other states, the law provides for protection measures for victims by issuing emergency protection orders, and if the perpetrator does not comply with the restraining order, these actions will form an aggravating circumstance in determining the punishment if the perpetrator is guilty will be proven.<sup>22</sup>

#### 4.5. Arizona - White Mountain Apache Tribe

The White Mountain Apache tribe enforces personal criminal law imposed by the tribal authorities, so their penal code regulates a separate chapter called "*Domestic Violence*", which criminalizes domestic violence.

In section 1 of this chapter, we find a statement outlining the principles underlying the tribal legislature's interest in limiting to a minimum the negative consequences of domestic violence, but also how society can act when committing such acts.

The whole chapter that contains provisions for criminalizing acts of domestic violence is an analyzed legislative landscape, which contains advanced thinking and is very explicit, even if it applies strictly to the tribe and in itself has a very small extent.

The White Mountain Apache tribe considers domestic violence to be a serious issue and seeks to protect the victim and enforce criminal law in accordance with the tribe's policy of "domestic violence is a crime against the whole tribe", so that the tribe is a whole body. he suffers when one of his parties suffers. Therefore, the imposed slogan imposes a high level of seriousness towards the unique culture of the Apaches who cherish the family and the roots of its formation. However, if such acts of domestic violence have been committed, the tribe tends to ensure maximum security for the victim and to attract the perpetrator as soon as possible for such inappropriate behavior.

The Apache Criminal Code defines domestic violence as "mental anguish, abuse, physical injury, provocation of reasonable fear, assault between family members or family members, and sexual assault on one of the members to another".

Apache law divides domestic violence into categories of action, such as:

- assault with intent to commit rape;
- attack with intent to kill;
- the attack with the deadly weapon (in case the death of the victim did not occur);
- the attack in order to cause serious injuries;
- criminal negligence;
- beating;
- sexual corruption;
- sexual abuse;
- sexual abuse of a minor;
- sexual assault on the wife;
- sexual exploitation of the minor.

The sentence imposed by the White Mountain Apache tribe for the crime of domestic violence is between 1 and 5 years in prison and severe fines of \$100 to \$5,000, depending on the circumstances of the actions, the aggravating and mitigating circumstances of the acts committed. and of course if

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<sup>22</sup> Ibidem.

the accused is found guilty.<sup>23</sup>

#### 4.6. Latin American states

The states of Latin America are a group of states that have one of the strictest laws regarding the criminalization of domestic violence, but at the same time the impact of this legislation is minor. One of the factors behind these phenomena is the lack of trust in state bodies, even if the state tries to provide safety to the victims. However, the phenomenon of domestic violence, especially against women, is a widespread phenomenon and in very few cases the victims turn to state bodies. That is why women's movements against domestic violence are one of the most progressive and active in the world.

Latin America was one of the first states to ratify the Convention on the Elimination of All Forms of Discrimination against Women. These states were also among the first to make innovative moves in anti-domestic violence legislation, including psychological violence as a modern form of domestic violence.<sup>24</sup>

Another dramatic fact about the real situation of domestic violence is that 60% of 600 women have died as a result of domestic violence under the age of 13. Also, about 25,000 children a year suffer from psychological and physical abuse by relatives and parents.

In summary, it is generally clear that for all listed states, domestic violence is a crime that harms the life, bodily and sexual integrity, and mental well-being of family members, which requires the state to protect its cell by manifesting certain actions, regardless of whether the criminal law regulates domestic violence as a separate crime, or applies the collaboration of the articles of the criminal law depending on the actions of the aggressor.

The actions differ from one state to another, but their purpose is certainly unique, so they tend to prevent domestic violence, and if such actions have been committed, they are intended to protect the victim and to impose sanctions on the perpetrator, as we have seen, the measure of imprisonment is often applied, and in some states the application of a complementary penalty, such as a fine.

#### 5. Conclusions

Traditionally, both women and children had a special inferior status compared to men, which favored various forms of aggression and humiliation, which society did not condemn.

Thus, understanding this issue of inequality that regardless of the level of democracy and social development is present in the century in which great emphasis is placed on fundamental human rights and freedoms, analyzing historical aspects I came to the conclusion that the freedoms and rights of the victim, who were practically always women and children, were appreciated based on society's vision of this phenomenon. So, if in the Middle Ages society admitted or even favored aggressive behavior in the family, then by the end of the 1990s already the social vision towards aggressive behavior in the family changed radically, which formed a new practice, by which society considers aggression in the family as deviant behavior.

We do not deny that the violent history has formed certain habits, stereotypes and even inequality between men and women, but our position is that traditions must be analyzed in detail, but also the consequences of these habits of practice. Thus, we cannot insist on the fact that domestic violence is only a premise of the historian.

The analysis of the criminal laws of the states subject to the comparative research method, allowed us to establish the differences between the laws, and to identify the aspects that could be subject to improvement.

In this regard, our position is that we recognize the cultural importance and customs formed during the historical period of mankind, but at the same time we insist that domestic violence in the

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<sup>23</sup> Ibidem.

<sup>24</sup> Philips R., Knust D., Schmiechen M., *op. cit.*, p. 21.

contemporary period is an anomaly, or the fight for fundamental human rights and freedoms have reached its peak, and the rate of domestic violence is significantly lower than in the post-1990s. Therefore, we consider that family aggression is the lack of control based primarily on the endogenous aspects of the aggressor, rather than on a practice formed over time.

Our vision is that if states make a sustained effort to inform society about the phenomenon of domestic violence, will carry out strategies to prevent and protect victims of domestic violence, in the future we will be able to witness a radically different phenomenon from the current situation.

Another aspect that could eliminate the phenomenon of domestic violence, or at least reduce it, are the changes in the criminal laws of Romania and the Republic of Moldova by increasing the sanctions for this crime, so that punitive measures will determine the potential aggressor not to commit aggression against their family members.

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