ASPECTS OF LEGISLATIVE AND PROCEDURAL UNIFICATION OF CIVIL AND CRIMINAL INSTRUMENTS FOR FIGHTING DOMESTIC VIOLENCE

PhD. student **Mihaela SAVA**[1]

Abstract

This research is structured in three subchapters, namely – the characterization of the civil and criminal legislative context that regulates the framing and sanctioning of crimes of domestic violence, identification of gaps or problematic aspects in legal or procedural matters and formulation of proposals to improve the sanctioning regime of crimes of domestic violence. The conclusions of the research are useful suggestions for the legislative and procedural unification of civil and criminal instruments to combat domestic violence.

Keywords: *domestic violence in Romania, legislative unification, European best practices.*

JEL Classification: K14, K15

1. Introduction

The present paper aims, on the one hand, to briefly characterize the legislative context of crimes of domestic violence with the identification of situations of overlap/non-correlation of rules and legislative wrongdoings and, on the other hand, the elaboration of proposals for the legislative unification of civil and criminal instruments to combat domestic violence.

In this respect, I will refer to the body of civil and criminal laws that regulate domestic violence, in order to identify the incomplete aspects, respectively, I will make suggestions for improving existing procedures, based on the problems encountered in judicial practice.

The subject of the paper has not only strictly legal relevance, but also social policy implications, the topic of domestic violence being interdisciplinary and involving numerous institutional structures, from those responsible with the prevention and protection of victims of abuse, where state intervention can benefit from the related involvement of NGOs or other private actors, to those with attributes in criminal prosecution and in sanctioning the acts of domestic violence.

Hence the importance of concerted actions, which aim, on the one hand, to simplify and streamline legal measures in this field, and on the other hand, to improve prevention actions and effective implementation of sanctions in the community.

The main difficulties we encounter in the efforts to make the sanction of domestic violence more effective are related to the Romanian social context, which implies a wide social acceptability of the phenomenon, an attitude often passive of the victims, induced by the attitude of society and more seriously, passivity and indifference (especially when we are dealing with economically and educationally disadvantaged environments) from the prosecution bodies and even the courts, in some cases. Thus, the steps which should be taken to reveal the real extension in the community of the phenomenon of domestic violence and its management on all levels, are much more complex than the introduction of legislative amendments. However, I believe that in the face of the obvious difficulty of a social transformation from the bottom up, a top-down transformation is useful and welcome, by imposing clear, simple, effective laws and procedures and measures with traceability within society.

2. Legislative context

In Romanian legislative practice, the management of domestic violence causes involves both civil and criminal mechanisms, hence the need I have identified, to unify and simplify the legislative framework.

[1] Mihaela Sava - Bucharest University of Economic Studies, Romania, avocat.msava@gmail.com.

From the point of view of the phases of family violence, I identify several categories of specific legislation: the rules designed to prevent the phenomenon of domestic violence, the rules that operate in the prosecution phase and in the trial phase and the rules applicable in the process of prevention of recidivism. To these, I add the required measures to protect victims and limit collateral effects, such as those on children, who, without being directly involved, are witnessing the commission of acts of violence. In the following, I will briefly describe each.

2.1. Rules on prevention

Regarding the prevention of the phenomenon of domestic violence, I identify the following institutional responsibilities regulated by specific rules:

● Order no. 2525/2018 of the Ministry of Labor, Family and Social Justice, which entrusts the local authorities with the intervention, upon referral to the victim, through multidisciplinary teams, which advise the victims from the point of view of exercising their legal rights, to provide them with medical, psychological, spiritual assistance, as appropriate. These teams can also direct the victim to state social shelters or inform them about alternative services offered by NGOs or other private entities. At the national level 42 such teams operate, at the level of each county and Bucharest, which can be contacted through a national call center – 0800500333, launched in 2015.

● The Ministry of National Education organizes educational events for parents and children, on topics related to domestic violence, in order to prevent it. Since 2005, by the Government Decision no. 686/12.07.2005 which approves the National Strategy in the field of preventing and combating the phenomenon of domestic violence, is traced to the Ministry of Education the responsibility to include in the school curriculum activities dedicated to preventing domestic violence, respectively to organize events in order to educate young people in the spirit of respect for family values. At present, there is still no very clear framework for assessing the implementation of these measures and their impact, which are still left to teachers.

● The Public Service of Social Assistance (SPAS) has attributes at the local level, in the sense of early detection of family risk situations and intervention in the sense of preventing violence against children, respectively the separation of children from parents, if the prevention stage was ineffective and it comes to continued violence. If SPAS does not have the capacity to provide social services as a matter of urgency, it is necessary to cooperate with the DGASPCs (General Directions of Social Assistance and Child Protection) who take over the management of the case.

To these local and central state structures are added accredited providers of social services from the private environment, namely NGOs, foundations, churches, private medical networks, which can supplement the resources of the competent state institutions.

2.2. Rules on prosecution and the trial phase

Regarding the identification and resolution of cases of domestic violence, this is divided between the police and the courts, which in some cases can be criminal courts and in other cases, courts specialized in causes of minors and family.

The mechanism for investigating cases of domestic violence is set in motion, in most cases, at the referral of the victim, who asks for the support of the police. In a small number of situations, the police are referred to third parties (relatives, neighbors, people nearby, etc.) or even self-seize.

Following the referral of the crime of domestic violence, the police establish the existence of the crime and on the basis of investigations, determine the degree of risk to the life and integrity of the victim. If there is an imminent risk that a person's life, physical integrity or freedom will be endangered by the act of domestic violence in order to lessen this risk, the police officer shall issue a provisional protection order for a period of 5 days, which shall be calculated per hour, i.e. 120 hours from the time of issue.

Police officers shall note the existence of the previously mentioned imminent risk on the basis of the assessment of the facts resulting from:

(a) evidence obtained as a result of the verification of domestic violence complaints, where domestic violence is not the subject of investigation into other offences;

(b) evidence gathered in accordance with the provisions of Law no. 135/2010 on the Code of Criminal Procedure[2], with subsequent amendments and additions, where acts of domestic violence are the subject of investigation in relation to the commission of acts falling within the provisions of Article 199 of Law no. 286/2009 on the Criminal Code, with subsequent amendments and additions. Police officers shall also assess the facts on the basis of the risk assessment form and according to the methodology for its use, established in accordance with the provisions of Article 22^{10} of Law 217/2003.

The provisional protection order issued by the police officer shall order, for a period of 5 days, one or more measures to protect the victim:

- the temporary eviction of the aggressor from the common dwelling, regardless of whether he is the owner of the property;
- the reintegration of the victim and, where appropriate, the children into the common dwelling;
- obliging the abuser to keep a specified minimum distance from the victim, from his family members, or from the residence, place of work or educational establishment of the protected person;
- forcing the assailant to hand over his weapons to the police[3].

These obligations shall enter into force immediately, without any further prior notice.

Following the issuance of the provisional protection order, it shall be submitted by the territorially responsible police unit, within 24 hours, to the Prosecutor's Office in the court in which the jurisdiction was issued, in order for a case prosecutor to decide on the need to maintain the measures established by the police. Within 48 hours of the issue of the protection order, the prosecutor decides either that the measures must be maintained, by an administrative resolution applied to the provisional protection order, or that they are not justified and should be revoked, in which case they motivate and communicate this fact to the police unit which in turn informs the parties involved.

The provisional protection order maintained by the prosecutor is submitted by him, with all the supporting documents, to the competent territorial court, with a request for the issuance of the protection order, for a maximum period of 6 months. In this situation, the 5-day validity of the OPP is extended accordingly, until the judicial procedures regarding the issuance of the OP are completed, with informing of the aggressor.

The Provisional Protection Order (OPP) may be challenged at the competent court within 48 hours of notification.

If it is found that the conditions for issuing the provisional protection order are not met, the police officers are obliged to direct persons who claim to be victims of domestic violence to make, if they wish, an application in court for the issuance of a protection order.

In the practice of the courts, the legislative basis consists both of the Criminal Code and of a body of special laws, represented mainly by Law no. 217/2003, which has undergone numerous successive additions and modifications, some in turn taking the form of the law.

In the Criminal Code, the seat of the matter is represented by article 199, which defines domestic violence, and Article 177, which delimits the notion of family member. The wording of Article 199 CC does not reveal the crime of domestic violence as a crime in its own right, but considers it as an aggravating circumstance in the case of the facts provided for in Article 188 and Article 189 CC, as well as in Articles 193 to 196 of CC. As a consequence, the crime of domestic violence is not sanctioned in a distinct way but only comes to increase the special maximum of the penalty imposed for committing one of the offences listed above.

This understanding of the crime of domestic violence is congruent with the practice of the criminal prosecution phase, when in parallel with the issuance of an OPP, the case prosecutor finds against the background of the situation of domestic violence, the commission of crimes stipulated by

[2] Volonciu N., Uzlau A.S. a.o. (2015), *Noul Cod de Procedura Penala comentat*, 2nd edition, revised and added, Ed. Hamangiu, p. 211.
[3] https://www.politiaromana.ro/ro/prevenire/violenta-domestica/ordinul-de-protectie-provizoriu, accessed on 28.10.2020.

the above mentioned articles and orders the formation of a criminal file in terms of the commission of those crimes, continuing the criminal prosecution that can be concluded with the sanctioning of the aggressor.

2.3. Rules applicable in the prevention of relapses

Pursuant to Law no. 252/2013 on the organization and functioning of the probation system and the Government Decision no. 1079/2013, which approves the Regulation of law enforcement, at the level of the Ministry of Justice carries out its activity in direct coordination of the Minister, the National Probation Directorate. This direction aims at the social rehabilitation of offenders, maintaining safety in the community by lowering the risk of recidivism. Also, the probation system reduces the social costs of the execution of sanctions, criminals being reintegrated into the community and in employment relations.

At the level of each county there is a local probation service, composed of probation counselors, who:

- carry out the assessment of the defendants of their own motion or at the request of the judicial bodies;
- support the court in the individualization of punishments and educational measures;
- supervises compliance with the measures and execution of the obligations established by the court in charge of the persons it supervises[4].

Violation of the protection order by the aggressor constitutes a criminal offence, which is punishable, according to Law no. 183/2020, with imprisonment from 6 months to 5 years, be it a provisional protection order or a protection order issued by the court.

A number of national studies, published by NGOs fighting for women's rights, between 2012 and 2018, show that, on the one hand, the average duration of obtaining a protection order has decreased from 33 days in 2013 to about 7 days in 2017, which greatly decreases the risk of continued violence during the period between the time of referral and the issuance of the protection order. With the introduction of the Provisional Protection Order (PPOs) in 2018, this risk is at least theoretically cancelled. It is not as good as the violation of the protection order, with 1424 such offences recorded in 2018, which means that about 1/3 of the OPs issued have been violated.

There are currently no impact studies on the effects of Law no. 183/2020 which imposes sanctions for violating protection orders. However, I can say that the mere legislative amendment, in the absence of adequate surveillance and intervention measures, will not have a significant impact.

In this respect, it is necessary to implement the electronic surveillance bracelets provided for by Law no. 97/2020 currently in the parliamentary debate stage. These bracelets are already good practice in other European countries, such as Austria, Sweden and Norway. For example, in a 2016 article, Henneguelle et al.[5] studies the effect of electronic bracelets on recidivism in France, showing that their implementation decreases the likelihood of relapse by 9 to 11%, which has important economic effects.

2.4. Legislative evolution

Regarding the provisions of civil legislation, we summarize below the main changes to Law 217/2003, on three main levels:

A. Completing and refining the notion of domestic violence:

- **Law no. 25/2012**, which substantially complements Article 2 of the original law, in the sense that it broadens the spectrum of domestic violence, initially understood only as physical, verbal and sexual violence, by including psychological, economic, social and spiritual violence.

[4] http://www.just.ro/directia-nationala-de-probatiune, accessed on 02.11.2020.

[5] Henneguelle, A., Monnery, B., & Kensey, A. 2016. *Better at Home than in Prison? The Effects of Electronic Monitoring on Recidivism in France*, „The Journal of Law and Economics", 59(3), 629–667; Hucklesby, A., & Holdsworth, E. 2016. *Electronic Monitoring in England and Wales*. University of Leeds, UK: Centre for Criminal Justice Studies, p. 89.

- **Law no. 106/2020,** which defines more broadly the notion of domestic violence and introduces a new notion of cyber violence as well as a series of duties of some state institutions regarding the fight against the phenomenon of domestic violence;

Through these two changes we have reached an extension of the notion of domestic violence that exhaustively covers the situations encountered in current practice, being also aligned with the definition of this notion at European level.

B. Broader and more precise definition of the notion of family member:

- Law no. 25/2012, which completes Article 3 of the original law, which defined the notion of family member in a very narrow sense, significantly broadening the definition, as follows:

(a) ascendants and descendants, brothers and sisters, their children, and persons who have become by adoption, according to the law, such relatives;

(b) the spouse and/or ex-wife;

(c) persons who have established relations similar to those between spouses or between parents and children, if they cohabit;

(d) the guardian or other person exercising in fact or in law the rights vis-à-vis the child's person;

(e) the legal representative or other person caring for the person with mental illness, intellectual disability or physical disability, with the exception of those who perform these duties in the performance of their professional duties.

However, the law maintains the condition of the cohabitation of family members, which will be abolished by CCR (Constitutional Court of Romania) Decision no. 264/2017, which granted the exception of unconstitutionality and finds that the phrase "*if they cohabit*" in Article 5(c) of Law no. 217/2003 for preventing and combating domestic violence is unconstitutional.

C. Efficiency of measures to protect victims and imposition of sanctions for violation of the protection order.

- **Law no. 187/2012** for the implementation of Law no. 286/2009 on the Criminal Code, amends art. 32 of Law no. 217/2003 as follows: *"Infringement of any of the measures referred to in Article 23 (1) (a) and (b) of Regulation (EEC) No 2081/92 shall be subject to the conditions laid (1) and ordered by the protection order constitutes the offence of non-compliance with the judgment and is punishable by imprisonment from one month to one year. Reconciliation removes criminal liability."*

Subsequently, by **Law no. 183/2020,** these sanctions were greatly increased, as follows:

1. Violation by the person against whom an order for the protection of any of the measures referred to in Article 23 (1) has been issued shall be deemed to have been in breach of the provisions of this Directive. (1), (3) and (4) (a) and (b) and ordered by protection order constitute an offence and shall be punishable by imprisonment from 6 months to 5 years.

2. Violation by the person against whom a provisional protection order has been issued of any of the measures referred to in Article 22^4 (1) (a) of Regulation (EEC) No 2081/92 shall be deemed to have been in breach of the provisions of this Regulation. (1) and ordered by provisional protection order constitutes an offence and is punishable by imprisonment from 6 months to 5 years.

- **Law no. 174/2018**, which introduces the provisional protection order, which can be issued directly by the police, when the criteria of gravity and celerity laid down by the law are met.

I note from the list of these changes that progress has been made both in the sense of more precise circumscription of the phenomenon and in that of the efficiency of the protection of victims and of sanctioning the aggressors.

In its current form, the special law is therefore mainly oriented towards providing protection with celerity to victims, therefore it has a broader meaning and insists more on identifying the sources of violence, both in terms of its types and in terms of categories of perpetrators, while the Criminal code envisages the classification of the act as a crime and less on some detailed classifications.

In criminal matters, crimes of domestic violence are found in Title I, Head. III – Crimes committed against a family member, comprising only two articles, art. 199 – *Domestic violence* and art. 200 – *Killing or harming of the newborn committed* by *the mother*.

Distinct from the articles referred to in Article 199 CC and which I have previously mentioned, there are still a number of articles of the Criminal Code that are circumscribed, in my opinion, in the sphere of the crime of domestic violence, as follows:

- ***Art. 197 – The ill-treatment of the minor,*** a crime which in the Criminal code of 1969 was part of the chapter of crimes against the family and by extending its scope into the new Criminal code, was framed in the chapter dedicated to crimes against the person, which a person can commit, independent of the nature of the relationship with the bullied minor. I believe that for this offence it should be provided separately the severing circumstance of committing it by a family member of the minor, in which case the provisions of Article 199 of the CC should apply.

- ***Art. 211 – Trafficking of minors***, a crime for which the aggravated form is not provided in the event of its occurrence by a family member of the minor, although I consider that these situations are encountered in practice and their sanctioning accordingly should be found in the text of the article.

- ***Art. 220 – Sexual act with a minor*** and ***art. 221 – Sexual corruption of minors,*** which although explicitly provide for the aggravated circumstance of the abuse by a relative in direct line, brother or sister of the minor and the increase of the penalty limits, are not mentioned in the list of art. 199 as crimes of domestic violence.

In conclusion, I consider useful to extend the enumeration in Article 199 CC, with the inclusion in the scope of crimes of domestic violence those provided for in the above-mentioned articles.

2.5. Final considerations

Although I have previously shown that Law no. 217/2003 is more concerned with the protection of victims of domestic violence and the penal code, especially the framing of crimes, I consider useful and necessary to unify the body of laws in civil and criminal matters on the definition of the notion of family member.

I present, in the following, in comparison of Article 177 (1) (b) and (c) Criminal Code and Article 5 (b) and (c) of Law no. 217/2003, concerning the definition of a family member, outlining that the latter is much more comprehensive and nuanced in defining the notion of family member.

I take into account in particular the condition of cohabitation, eliminated by CCR Decision No. 264/2017 of the special law, but still present in the Criminal Code, which can lead to the application of unequal sanctioning treatment in the practice of the courts. In particular, a court of minors and family can issue a protection order even if the aggressor does not live with the victim, instead the criminal court seized for crimes committed against the background of the situation of domestic violence, cannot apply the aggravated form of the crime as being committed by a family member, since according to Article 177 CC, the condition of the victim's cohabitation with the aggressor is not met.

Table 1. Comparative presentation of the notion of family member in civil and criminal law

Art. 177 Criminal Code	**Article 5 of Law No. 217/2003, republished**
(b) the spouse;	(b) spouse and/or ex-wife; brothers, parents and children from other relationships of the spouse or ex-spouse;
(c) persons who have established relations similar to those between spouses or between parents and children, if they cohabit.	(c) persons who have established relations similar to those between spouses or between spouses and children, current or former partners, whether or not they have lived with the aggressor, ascendants and descendants of the artery/partner, as well as their brothers and sisters;

It is noted, by comparing the two texts of the law, both in force, that the special law introduces a more detailed approach as compared to the Criminal Code, which can lead to non-unitary solutions in the practice of the courts.

3. Proposals *de lege ferenda*

In the following, I systematize the proposals *de lege ferenda* that I reached following the analysis of the legal and factual situation, in two main categories: legislative changes and procedural changes.

3.1. Proposals for legislative changes

In discussing the changes that I consider appropriate for the unification and efficiency of criminal and civil legislation in the field, I will refer to the two articles of the Criminal Code which constitute, in particular, the seat of the matter for the violence in the family, respectively Article 177 and Article 199.

With regard to Article 177 CC, by reporting, as I have shown above, to Article 5 of Law No. 217/2003, republished, I consider that from paragraph 1, letter (c), the condition of cohabitation should be removed. Although in the commentary to this article, Michinici[6] show that the notion of family member is used either for the application of causes of non-punishment or for the application of causes of aggravation in a variety of crimes, other than domestic violence and recommend, in the latter situation, the priority use of the provisions of the special law, I appreciate that the maintenance of the condition of cohabitation in the Criminal Code, is such as to generate non-unitary solutions in the practice of courts. In this respect, I consider that the text provided for in paragraph 1 (c), 'relationships similar to those between spouses or between spouses and children' has by itself sufficient clarity in discerning between purely conjunctive relations and household relations in order not to create, in cases where the application of Article 177 CC entails the non-punishment or reduction of punishment, an unjust benefit.

With regard to Article 199 CC, it is necessary, in my opinion, to discuss three aspects of legislative amendment:

(a) Widening the spectrum of crimes that can constitute domestic violence. In view of the crimes defined in the Criminal code which may fall within the scope of domestic violence, I consider it appropriate to broaden the spectrum of crimes listed in Article 199, including Article 197 – The ill-treatment of minors, Art. 211 – Trafficking in minors, Art. 220 – Sexual act with a minor and Art. 221 – Sexual corruption of minors. Thus, in the case of these crimes, the cause of aggravation specific to domestic violence could be introduced, which would be such as to discourage them from being committed by those in relation to whom the minor is most vulnerable. This proposal comes in the sense of broadening the scope of the crime of domestic violence, which has already been carried out in relation to the Criminal Code of 1969[7]. I consider that the updating of the list of offences provided for in Article 199 of the Criminal Code must occur periodically, with a certain rhythm, dictated by the continuous changes of the socio-economic context.

(b) Change in penalty limits. In its current form, Article 199 CC provides that, in the event of the commission of the offences referred to against a family member, „the special maximum penalty provided for by law shall be increased by one patrimony".

Examining the offences listed in Article 199 of the Code, it is found:

- that only in a small proportion of the cases, maximum penalties apply, which makes this cause of aggravation in the text of the article does not work in practice;

- that in the case of some of the crimes listed, for example Article 189 – Qualified murder, the maximum penalty is "life imprisonment", which, again, makes the text of Article 199 CC

[6] Raducanu, R., Raduletu, S., Michinici, M.-I., Crisu-Ciocînta, A., Toader, T. (2014), *Noul cod penal: comentarii pe articole*, Ed. Hamangiu, Bucharest, p. 75.
[7] Ibid, p. 76.

unenforceable.

In view of these aspects, I recommend that the increase of the penalty in cases of domestic violence should be applied not only to the special maximum, but to the limits of punishment.

(c) Clarification of the relationship between reconciliation and criminal liability in the case of domestic violence offences. In its current form, Article 199 paragraph 2 CC provides, on the one hand, that the criminal action can also be started *ex officio* and, on the other hand, that the reconciliation removes criminal liability.

The Chamber of Deputies, as a decision-making body, recently adopted law proposal no. 103/2018 proposing to amend paragraph 2 of Article 199 of the Code, in the sense of eliminating the phrase "reconciliation removes criminal liability". Regarding this amendment of the above-mentioned article, I make the following comments:

- In accordance with Article 159 of the Code, the reconciliation may take place exclusively in the event of the *ex officio* initiation of the criminal prosecution, the presence of the phrase relating to the reconciliation in Article 199 paragraph 2 CC being therefore only a brief resumption of the provisions of Article 159 CC, since the phrase appears in the final thesis of the article, after it is stated that "in the case of the offences provided for in Articles 193 and 196 CC committed on a family member, the criminal action may be set in motion also *ex officio*".

- The institution of reconciliation has no effect, therefore, in the case of the existence of a prior complaint, when, according to Article 158 CC, only the withdrawal of the prior complaint removes the criminal liability. Furthermore, in paragraph 4, Article 158 of the Code, the we read that "in the case of offences for which the initiation of the criminal action is conditional on the introduction of a prior complaint, but the criminal action has been set in motion *ex officio*, under the law, the withdrawal of the complaint shall take effect only if it is approved by the prosecutor".

In practice, we may see the following situations:

● The victim does not file a complaint and the criminal action does not set in motion *ex officio* either. This is, in my opinion, the "grey" area of domestic violence, which remains unregulated, and where intervention is needed, for example with some criteria for the *ex officio* initiation of criminal proceedings;

● The victim complains and, at any pressure of the abuser or of her own free will, withdraws it until a final court decision is issued. In this case, if the criminal action has not been initiated also *ex officio*, under the conditions of Article 158 paragraph 4 CC, the aggressor continues to avoid criminal liability;

● The criminal action is initiated *ex officio*, independent of the attitude of the victim. Only in the latter case, still rare in practice, is the applicable the amendment proposed by the law project, which removes the "artifice" of the reconciliation that an aggressor can take advantage of to escape criminal liability.

Therefore, although the recently adopted amendment in Parliament represents a form of making the application of criminal sanctions in the cases of domestic violence more efficient, taking into account the concrete situations listed above, I appreciate that other changes are necessary to fill the identified gaps. Such a possible amendment could concern the development of strict criteria for assessing the seriousness of a crime falling within Articles 193 and 196 of the CC, on the basis of which the criminal action is automatically set in motion.

3.2. Proposals for procedural changes

Regarding procedural changes, they are included in the following main categories:

(a) Prevention of relapses

● ***More effective monitoring of abusers.*** The current practice registers, unfortunately, situations, even if not very numerous, but with a great impact on public order, in which the aggressors under the power of a protection order issued by the court, relapse in the commission of violent acts, sometimes more serious the previous ones, going as far as the murder of the victim. Situations of this kind discourage victims, who are already reluctant about the legal possibilities to defend themselves,

so that an inefficiently monitored protection order becomes, from a tool to reduce domestic violence, one of inhibiting other victims, in the sense of appealing to legal means of protection. Considering this situation, I recommend the implementation of electronic bracelets in use in other European countries and whose legal basis exists – only at the theoretical level – also in Romanian legislation (art. 38 paragraph 1 letter (g) of Law no. 217/2003).

● ***Implementing mobile alerts available to victims of domestic violence.*** The existence of such a system, in force in countries such as Norway, would allow the much faster alerting of prosecution bodies in cases of recidivism, consequently, making their intervention much more efficiently, which can even save the life of the victim.

(b) Victim Support Measures. I am considering the progressive increase in the number of shelters by raising funds from the private sector and by working with NGOs involved in reducing domestic violence. It is also essential an accurate centralization of these facilities for hosting victims of domestic violence, so that possible private shelters are known to the prosecution bodies, to adequately direct victims to them. The establishment of several accommodation and counseling centers for abusers, when they are removed from the common dwelling, is also a proposal to consider.

Other proposals aim to streamline and professionalize social services that advise victims or monitor the evolution of relationships in families with problems of violence and to invest in educational programs aimed at both victims and abusers.

4. Conclusions

In this paper, I have followed, on the one hand, the succinct analysis of the current situation in Romania, considering the legislation and procedural elements relevant in the management of the phenomenon of domestic violence and, on the other hand, the highlighting of the missing, or unaligned aspects, with the formulation of proposals *de lege ferenda.*

From the analysis of the legislative and procedural context, it emerges that, despite indisputable progress, mainly related to the updating of Law no. 217/2003, and its alignment with today's realities, steps are still to be taken to amend criminal legislation in order to unify and make the laws more efficient.

The main vulnerability remains, however, the monitoring of the application of laws and procedures in the area of domestic violence. Although there is, for example, a legislative framework for the protection order, which has recently improved considerably with the introduction of the provisional protection order, it remains topical to adjust the mechanisms by which the institutions involved ensure that these orders are followed. Therefore, it is not the lack of legislation that we need to report, first of all, but the management of the stages after the imposition of a sanction and the mechanisms by which its effects can be properly controlled.

Similarly, with regard to the procedures, I appreciate that it is less necessary to focus on the prosecution phase, or the trial phase, well covered procedurally, but especially on the post-litigious phase, in which both victims and abusers must be supported in order to return to a normal life. In this respect, we have proposed the realistic and up-to-date centralization of housing facilities, the coordinated involvement of the institutions responsible in the training of social workers and in ensuring effective cooperation with the prosecution bodies and the courts.

Bibliography

1. Henneguelle, A., Monnery, B., & Kensey, A. 2016, *Better at Home than in Prison? The Effects of Electronic Monitoring on Recidivism in France*. „The Journal of Law and Economics", 59(3), 629–667.
2. Hucklesby, A., & Holdsworth, E. 2016, *Electronic Monitoring in England and Wales*. University of Leeds, UK: Centre for Criminal Justice Studies.
3. Law no. 106/ 2020 on the amendment and completion of Law No 106/2020 on the amendment and completion of Law no. 106/2020 on the amendment and completion of Law no. 217/2003 for the prevention and combating of domestic violence, published in the Official Gazette, Part I no. 588 of 6 July 2020.
4. Law no. 174/2018 on the amendment and completion of Law no. 174/2018 217/2003 for the prevention and

combating of domestic violence, published in the Official Gazette, Part I no. 618 of 18 July 2018.
5. Law no. 183/2020 on the amendment and completion of Law 217/2003 for the prevention and combating of domestic violence, published in the Official Gazette, Part I of no. 758 of 19 August 2020.
6. Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, published in the Official Gazette, Part I, no. 757 of 12 November 2012.
7. Law no. 217/2003 on the prevention and combating of domestic violence, republished in the Official Gazette of Romania, Part I, no. 205 of 24 March 2014.
8. Law no. 25/2012 on the amendment and completion of Law No. 217/2003 on the prevention and combating of domestic violence, published in the Official Gazette, Part I No. 165 of 13 March 2012.
9. Raducanu, R., Raduletu, S., Michinici, M.-I., Crisu-Ciocînta, A., Toader, T. (2014) *Noul cod penal: comentarii pe articole*, Ed. Hamangiu, Bucharest.
10. Romanian Constitutional Court Decision No 264/2017 on the admission of the exception of unconstitutionality of the phrase "if they cohabit" in the provisions of Article 5(c) of Law no. 264/2017. 217/2003 for the prevention and combating of domestic violence, published in the Official Gazette, Part I, no. 468 of 22 June 201.
11. Volonciu N., Uzlau A.S. a.o. (2015), *Noul Cod de Procedura Penala comentat*, 2nd edition, revised and added, Ed. Hamangiu, Bucharest.