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**Considerations on the Improvement of the Legal Framework Necessary for Preventing and Combating Violence against Women in the European Union**

**Tache Bocanială<sup>1</sup>**

**Abstract:** Violence against women is a common phenomenon in all social layers and in all society, regardless of their stage of development, political stability, culture or religion, with particularly negative consequences. Combating violence against women requires, besides the sanctioning, repressive measures against perpetrators, and also a series of preventive protection measures and services for victims. Reforming the criminal law of Romania, but also a number of regulations adopted by international organizations, especially the European ones, be it European Union or the Council of Europe, attest encouraging legal developments in this area. The conclusions drawn in this paper from the daily practice of judicial bodies, as well as specialized studies highlight the need for improvement and adaptation of specific legislation in order to prevent and combat crime and violence targeting women, highlighting a few directions in this regard.

**Keywords:** gender violence; domestic violence; reporting acts of violence; law enforcement agencies

## **1. Introduction**

Despite the fact that domestic violence and, in particular, violence against women represents a subject of debate for decades, the international community has failed, so far, to end this form of violence extremely destructive.

Violence and fear of being victimized undoubtedly affect the quality of life of any person. In practice it has been found, however, that different groups, such as women, children and elderly persons, are usually regarded as the favorite targets of violence, as evidenced by statistics and judicial bodies. With regard to scientific interest on the domestic violence phenomenon, especially against women, it did not know the proportion according to its dimension, especially on the need to identify the best ways and means to prevent, control and mitigate its extremely harmful effects. The specialized literature records only a few studies based on prevalence data regarding gender-based violence, and less on procedures and mechanisms of accountability of the perpetrators.

A general definition of violence, as formulated by the World Health Organization, is “the intentional use of physical force, on oneself, to someone else or on a group or community, resulting in physical or psychological trauma.”

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<sup>1</sup> Senior Lecturer, Faculty of Law, “Danubius” University of Galati, Romania, Address: 3 Galati Boulevard, 800654 Galati, Romania, Tel.: +40.372.361.102, fax: +40.372.361.290, Corresponding author: tache.bocaniala@univ-danubius.ro.

Violence against women includes crimes that disproportionately affect women, such as sexual assault, rape and “domestic violence”, the most frequent cases encountered in the practice as those in which the physical, brutal, violence combined with violence or sexual assault in domestic violence. We can speak of the fact that, most often, in such cases we are dealing with a violation of women's fundamental rights regarding dignity and equality. In fact, female genital mutilation - one of the most brutal forms of gender violence, is still common in different regions of the world, it is recognized internationally as a human rights violation, a form of torture against girls and women and it reflects an inequality deeply rooted between genders.

In the specialized literature, domestic violence is defined as “a threat or production of physical injury, in the past or the present in the cohabitation with a partner. Physical or sexual assault may be accompanied by intimidation and verbal abuse; destruction of personal property of the victim; her forced isolation from the rest of the family or friends or other people who could be a potential aid for the victims, including children; spreading threats and terror around the victim; controlling access to money or personal items, food, means of transportation, telephone and other sources of protection and care that the victim-women could benefit from”. (Stark & Flitcraft, 1996)

In turn Directive 2012/29/EU of establishing minimum standards on the rights, support and protection of the victims of crime, gender violence is defined as “ the violence directed against a person due to gender, gender identity or his gender expression, or affecting people of a particular gender disproportionately; as it can cause to the victim physical, sexual, emotional and psychological trauma and economic damages and it is understood as a form of discrimination and violation of the victim’s fundamental freedoms and it includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), human trafficking, slavery and different forms of harmful practices such as forced marriages, female genital mutilation and the so-called “honor killings”.<sup>1</sup>

## **2. Knowing the Exact Dimensions of Violence Phenomenon against Women**

According to Eurobarometer data from 2010, 72.3% is “Domestic violence against women” coordinated by the European Commission, in Europe, one woman out of four is a victim of domestic violence at some point in life. Between 6% and 10% of the female population of Europe are affected by domestic violence within a year.

According to preliminary results of a European survey on violence against women conducted by the Agency for Fundamental Rights<sup>2</sup> in March 2013 it resulted, inter alia, that: four out of five women have not resorted to any services, such as healthcare, social services and support for victims, after the worst incidents of violence of people, other than their partners; women who reached for support have benefited most likely of health care, emphasizing the need to ensure that health professionals can address the needs of the victims of violence; two in five women did not know the law or police initiatives that may protect domestic violence cases and half of them did not know of any law or preventive initiative.

A serious fact that can be established today is that most women who are victims of violence do not report their experiences, neither to police nor any organization supporting victims. Fear, shame,

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<sup>1</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 for establishing the minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

<sup>2</sup> Established by Regulation (EC) no. 168/2007 of 15 February 2007 on the establishment of the Agency for Fundamental Rights of the European Union.

partner commitment, hope that the situation will change, keeping the family image are barriers that stand in the way of going to the police or to the judicial bodies. To these are added often a series of pressures from the family, the aggressor and / or children and some community obstacles emphasizing the vulnerability of women such as insecurity, bureaucracy (Savenco, 2011, pp. 103-111), lack of financial resources, poverty and lack of social resources.

Worse is the fact, unacceptable nowadays, as most women do not report violence and do not feel encouraged to do so by law enforcement agencies, often seen as uncaring, which has as consequence the records of official data in the criminal justice system, very few reported cases compared with the actual crime in the area.<sup>1</sup>

Thus, regarding the cases of violence against women, other than domestic, we can speak of a more appropriate and sort of non-discriminatory one, the general perception of women in situations of domestic violence is that the answer of law enforcement agencies is fragmented; each episode of violence is treated as an isolated event, without taking into account its repetitive feature. Moreover, even when the police are asked several times, and the acts of violence worsen, the police's answers often remain inefficient, i.e. fine or warning. In most cases the implementation of these measures is ineffective in that it does not determine the abuser's liability, and often not even the cease or deter further violence or even diminish it.

In reference to the stage of criminal prosecution, in order to ensure criminal liability of the perpetrators, the women victims of various forms of violence are often unable to access the judicial system due to the conditioning of the receipt of complaints and for starting inquiries, having difficulties in obtaining evidence, given its specific environment, usually private, where such acts are usually committed, lack of witnesses or their lack of involvement in supporting the charges. Last but not least it should be mentioned among the obstacles that hinder or sometimes makes it even impossible to precede a trial it is also the difficult access, including monetary costs that must be incurred at the forensic institutions to obtain the medical certificates attesting the injuries or the wounds or their seriousness.

As a result, most women who are victims of violence do not come into contact with the judiciary system and other services that may mitigate the suffered prejudice.

To close a real vicious cycle, previous failures regarding the liability of the aggressor can lead to greater distrust of women victims of violence in the criminal justice system, namely the renunciation to further address the prosecution or courts in such cases.

For the references on the context of reporting by women victims of violence and their registration by the judiciary bodies in order to handle the aggressor's liability, we should add the huge justice gap<sup>2</sup>, which we are currently experiencing. Many are lost cases or do not have a proper finality, at different levels of the criminal justice system, with negative consequences especially in terms of proliferation phenomenon on the one hand, but also in terms of the impossibility of dimensioning the judicial, legislative measures for preventing and combating the effectiveness of this phenomenon. Thus, to increase the degree of addressability of victims to law enforcement agencies with responsibilities in the field, but also to reduce this judicial gap, there are necessary obvious changes at all levels, those of

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<sup>1</sup> Even in Romania the situation is not better in this regard, but it could be pointed out some progress. Thus, for example in 2011, at the level of the General Inspectorate of Romanian Police there were notified by 9.46% more domestic violence offenses compared to 2010, which shows some increase of the public trust in the police.

<sup>2</sup> Justice gap - the difference between the number of offenses recorded and the number of perpetrators who are brought to justice, the key measure of the effectiveness of the criminal justice system and a key indicator of success in reducing crime (The Crown Prosecution Service, UK).

ruling and those of intervention, on individual background (becoming liable the individual) and also for policies and methodologies that govern the criminal justice system.

Basing on a series of statistical data, and for the reasons stated above, they are far from reflecting the reality, as for the practical answers and the level of policies that have as aim combating violence against women, they are not always the most appropriate. This highlights the need for the EU and some Member States and their research institutions to conduct surveys and other research on violence against women in order to cover the lack of comprehensive and comparable data in this field which maintains compared to other areas as employment where most Member States collect data according to gender.

### **3. The Current European Legal Framework on Violence against Women and its Prospects**

Despite the many efforts made so far to ensure a climate of equality between men and women in the public sphere, a more careful analysis on family, the relationships within the family and of couple may further highlight the contrasts and the dysfunctional realities.

The fight against domestic violence is placed under the paradigm of child's fundamental rights and human rights protection, as they are stated and recognized by the UN Convention on the Rights of the Child, the Universal Declaration of Human Rights or the Charter of Fundamental Rights of the European Union.

From the human rights perspective, the family is no longer perceived as a long private domain with patriarchal rules, where the man has absolute power and therefore the family is no longer outside the legal regulations and social control. On the other hand, the legislation currently adopted continues to reflect a series of norms and social structures, which perpetuate the inequalities of power in the society.

Although in the recent decades there have occurred changes at the legislative level, both at national and European level, the phenomenon requires continuous attention in order to achieve the most effective approaches for preventing and combating violence against women, and to achieve that is, on the one hand, the actual material impact of the legislation, by its actual effect brought in the life of women in the situation victims of violence and with what measures and steps of complementary actions must be supplemented in order to achieve this goal.

The Istanbul Convention, adopted by the Council of Europe in 2011<sup>1</sup>, is the first regional instrument with compulsory legal force in Europe that comprehensively deals with the many forms of violence against women. It is addressed both domestic violence and other forms of violence against women: physical; psychological, sexual (including rape) violence; sexual harassment; forced marriage; female genital mutilation; abortion and forced sterilization.

Preventing violence, protecting the women victims and prosecution of perpetrators of such violent acts are key points of the Convention. Based on the finding that violence against women has its origins in the inequality between women and men in society, it manifests a perpetuated culture of tolerance and denial, this instrument with a regional character, trying to change the mentality and feelings of individuals, being practically a call to society, especially men and boys, to change their attitude.

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<sup>1</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (Council of Europe Treaty Series - No. 210/2011).

Beyond the direct impact of violence on women victims than on their intimates, children or other relatives, it is also emphasized the harsh economic impact upon society. The annual cost to the EU of gender violence against women was estimated at 228 billion in 2011 (equivalent to 1.8% of the EU GDP), of which 45 billion annually for public and state services and 24 billion EUR to lower the economic output.

According to EU statistics, in 2012, about 13 million women in the EU have been subjected to physical violence which corresponds to a percentage of 7% of women aged between 18 and 74 years in the EU.<sup>1</sup>

Based on these realities, through its main bodies, particularly the Parliament, the Council and the Commission, the European Union has expressed clearly and supported a clear political will to consider women's rights as a priority and to take long-term measures in this field. There are particularly regarded preventing and combating gender violence, the development of a network of institutions and organizations, both governmental and non-governmental to collaborate, in order to aid and assist women victims of violence and not least, achieving a coherent and efficient data collection targeting violence against women that represents a good basis for directing political, legal and administrative efforts in the field.

The rejection by the European Parliament on 12 December 2012 the Commission proposal for a Regulation of the European Parliament and of the Council regarding the European statistics on safety against crime emphasized the need for a new EU legislative proposal that would establish a coherent system for collecting statistics on violence against women in the Member States; the Council in its conclusions of December 2012 called for the improvement of data collection and dissemination of comparable, reliable and regularly updated data on all forms of violence against women, both at national and EU level.<sup>2</sup>

Consequently, by the resolution adopted on 25 February 2014, the European Parliament called on the Commission to present an EU strategy and an action plan to combat all forms of violence against women, as it was set out in the Action Plan 2010 for implementation the Stockholm Programme<sup>3</sup>, in order to protect the integrity of women, equality<sup>4</sup>, and welfare<sup>5</sup>, concretely and effectively in an area of freedom, security and justice, with particular emphasis on prevention, by informing women about their rights and the awareness of men and boys, from an early age to respect the physical and psychological integrity of women. The strategy and action plan must insist on adequate training of staff in police and judicial services, which would take into account the specific nature of gender-based violence and encouraging the Member States to consider supporting victims, for rebuilding their lives and to regain self-confidence, so they would not get back to vulnerability or dependency situations. The strategy should include measures to support children who have witnessed violence and to recognize them as victims. Last but not least, the European Parliament called on the Commission to submit a revised proposal for a Regulation on European statistics on violent crime, including a coherent system of

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<sup>1</sup> According to Eurostat online database, 186 590 848 women aged between 18 and 74 years living in the EU-28 on 1 January 2013, see: [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database) (demo\_pjan data code, data extracted on 16 August 2013).

<sup>2</sup> European Parliament resolution of 25 February 2014 with recommendations to the Commission on combating violence against women (2013/2004 (INL))

<sup>3</sup> The Stockholm Programme has set the priorities of the European Union (EU) for the area of justice, freedom and security for 2010-2014.

<sup>4</sup> Article 2 of TEU.

<sup>5</sup> Article 3, paragraph (1) of TEU.

collecting statistical data, relevant and comparable information on gender-based violence in the Member States.

#### **4. Elements of Specific Measures regarding Combating Violence against Women in Romania**

The general framework for preventing and combating violence against women at national level is legally ensured by the new Criminal Code (NCC) and especially by the Law no. 217/2003 on preventing and combating domestic violence, republished.<sup>1</sup>

Although as the previous legislation, the new Criminal Code of Romania does not regard distinctively the offenses that have as victims the women, we find a breakthrough achieved by the delimitation in the Chapter III of Title I of the Special Part a distinct category of facts under the title “Offenses committed against a family member”. According to article 199 of the NCC, the offenses consisting of violent acts committed on a family member are considered as aggravated and sanctioned form, by increasing with a quarter of the maximum for the punishment provided by the law.

In turn, Law no. 217/2003 on preventing and combating domestic violence, republished, establishes since the first article that “Preventing and combating domestic violence are part of an integrated policy for protecting and supporting the family and it represents an important public health problem”<sup>2</sup> and “The Romanian State, through the competent authorities, develops and implements policies and programs aimed at preventing and combating domestic violence and it protects victims of domestic violence.”<sup>3</sup>

The many changes, including the emergency procedure<sup>4</sup>, the completions and republishing suffered by this legislative act testify the Romanian legislator’s concern for improving the regulatory framework in the field, in order to meet the demands of social evolution, but also those imposed by the European standards.

An important addition represents the provisions on the possibility of requesting and obtaining a protection order for the victim of violence, by which the court to decides, provisionally, one or more measures or obligations or prohibitions for the aggressor. This legal institution represents an absolute novelty for the Romanian legal system, as well as for specialized institutions to execute it. Violation of any of the measures ordered by the protection order constitutes the offense of not complying with the judgment and he shall be punished with imprisonment from one month to a year. In case of conviction, he cannot be released on parole.

Pursuant to article 108 of the Constitution of Romania, republished, and article 8, paragraph (5) of Law no. 217/2003 on preventing and combating domestic violence, republished, the Romanian Government approved the National Strategy for preventing and combating domestic violence for the 2013-2017 period and the Operational plan for implementing the National strategy for preventing and combating domestic violence in 2013-2017.<sup>5</sup>

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<sup>1</sup> Official Monitor, Part I, no. 205 of 24 March 2014.

<sup>2</sup> Article 1, paragraph (2) of Law no. 217/2003 on preventing and combating domestic violence, republished.

<sup>3</sup> Article 1, paragraph (3) of Law no. 217/2003 on preventing and combating domestic violence, republished.

<sup>4</sup> Last update was brought to Government Ordinance no. 6/2015 amending and supplementing Law no. 217/2003 on preventing and combating domestic violence, published in Official Monitor, Part I, no. 78 of January 29, 2015.

<sup>5</sup> Official Monitor, Part I, no. 819 of December 6, 2012.

## **5. Short Conclusions and Proposals for Measures Limiting the Phenomenon**

The impact of violence against women is felt beyond those women who are victims themselves, as it seriously affects in different ways also their families, friends and society as a whole. This requires a critical analysis of how the society and law enforcement agencies respond to this abuse. Therefore, measures are needed to prevent and combat violence against women; there are required services for victims both in the European Union (EU) and at national level.

Stopping violence against a woman can be achieved effectively only through the liability of the actual perpetrator and increasing the victim's confidence that she will be protected and supported in order to reach a safe life.

Given the extent of the violence against women, the European Union context in the field of justice and internal affairs in the future will have to ensure that violence against women is recognized, dealt with and addressed as a serious violation of fundamental rights in the EU positioning on crime and victimization after the offenses.

The legislation should be amended permanently in order to respond to the new form or the newly recognized forms of violence against women, such as stalking for the purpose of harassment or abuse through new technologies such as the internet.

Prostitution may be recognized as a form of violence against women due to its effects on physical and mental health, especially in cases of forced prostitution and trafficking in women for prostitution.

European Union, together with all 28 Member States should urge the adherence to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Nowadays one can see that this is the most comprehensive regional instrument that deals with violence against women.

All EU Member States should be encouraged and determined to develop specific action plans of action at national level regarding the violence against women, by engaging the civil society actors working with women victims of violence by involving them effectively in developing these strategies and action plans in order to help ensure victims obtain practical results, and also the sustainability of these plans.

The EU policy on employment, education, health and information technology and of communications should address the impact of violence against women in those areas. This should be reflected at the level of Member states in the specific interventions from the political point of view and national action plans in these areas.

A victim-oriented approach and focus on the rights of women victims of violence needs to be strengthened at the level of the EU and Member States by generalizing the recognition of violence "domestic" or "in a couple" as a problem that requires the state's intervention more strongly.

It is striking the need for the EU and the Member States to adopt compulsory rules for data collection on a regular basis, on various forms of violence against women, to compile the answers at policy level and action on site. This process could be supported by Eurostat and its relevant expert groups and it could be used to provide data to specific monitoring bodies of the UN and Council of Europe and the European Institute for Gender Equality between Women and Men.

It is obvious the need for a European Observatory on violence against women and girls, based on the existing institutional structures (the European Institute for Gender Equality EIGE) and under the direction of an EU coordinator for violence against women and girls.<sup>1</sup>

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<sup>1</sup> Institutions of this type have proven their particularly usefulness in other “hot” areas such as the European Monitoring Centre on Racism and Xenophobia (OEFRX) or the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).