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**Transposing the Istanbul Convention Preventions into Romanian
Legislation. Good Practice Examples in the Implementation of Public
Policies in the DV and EO Field**

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Abstract: The Istanbul Convention represents an illustrative international treaty for human rights with its main purpose of protecting women against all kinds of violence. Through its provisions, the convention contributes to elimination of all forms of discrimination and promotion of equal opportunities between women and men by empowering women. The Istanbul Convention is a mixed act (shared policies), which means that a part of its provisions is of national competence and others are of EU competence. Our objective is to emphasize the measures Romania has taken in the process of harmonizing the national legislation with the Convention provisions, especially by underlining the examples of good practice of this activity, the results of which are recognized at an international level.

Keywords: domestic violence; Empowerment; shared policies

Introduction

The Istanbul Convention represents an illustrative international treaty for human rights, its main purpose is to protect women against all kinds of violence, as well as prevent, prosecute and eliminate domestic violence. The convention, by its provisions, contributes to eliminating all forms of discrimination and promoting equal opportunities between women and men by empowering women. ² The Istanbul Convention is a mixed act (meaning shared policies), which means that a part of its provisions is of national competence and others are of EU competence.³

Our objective is to emphasize the measures Romania has taken⁴ in the process of harmonizing the national legislation with the Convention provisions, especially by underlining the examples of good practice of this activity, the results of which are recognized at an international level. The present article is the first synthesis written with accuracy with regard to the effects of the Istanbul Convention in the signatory countries, especially in Romania. This synthesis can, and must be presented to the academic

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² **Empowerment** is a set of measures designed to increase the degree of autonomy and self-determination in people and in communities in order to enable them to represent their interests in a responsible and self-determined way, acting on their own authority. It is the process of becoming stronger and more confident, especially in controlling one's life and claiming one's rights.

³ European Commission, "Proposal for a Council Decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence" COM (2016) 109 final, 7 point 2.1.

⁴ On 23 May 2016 Romania has ratified the Istanbul Convention which entered into force on the 1st of September 2016.

world taking into consideration the fact that the public policies in the field benefit from scientific results in various social domains (sociology, cultural anthropology, education so on), and, as a result, it delivers the results of this labor, something that needs to be known and acknowledged.

The Istanbul Convention

The Convention draws a well comprising framework of policies and measures for protecting and assisting all victims of domestic violence, violence against women and, last but not least, offers a real framework for NGOs and governmental agencies to cooperate towards an integrated approach in the field of preventing and combating domestic violence. All these measures and recommendations represent the subject of a specific monitoring mechanism, established to ensure effective implementation of the treaty provisions by the involved parties.

Laying the groundwork for this document were other treaties and decisions previously signed, as it follows:

- Convention for the Protection of Human Rights and Fundamental Freedoms (STE No. 5, 1950) and its Protocols, The European Social Charter (STE No. 35, 1961, revised in 1996, STE No. 163), The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005) and The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007);
- Recommendations of the Ministry Committee addressed to the member states of the European Council: Recommendation Rec(2002)5 regarding women protection from violence, Recommendation CM/Rec(2007)17 regarding standards and mechanisms for ensuring gender equality, Recommendation CM/Rec(2010)10 regarding women and men role in preventing and solving conflicts and in peace building and other relevant recommendations; and Taking into account the growing volume of European Court of Human Rights case-law, which sets important standards in the field of violence against women.
- The International Covenant on Civil and Political Rights (1966), The International Covenant on Economic, Social and Cultural Rights (1966), United Nation Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”, 1979) and its Optional Protocol (1999), as well as the General Recommendation No. 19 of the CEDAW Committee regarding violence against women, United Nation Convention on the Rights of the Child (1989) and its Optional Protocols (2000) and United Nations Convention on the Rights of Persons with Disabilities (2006);
- The Rome Statute of the International Criminal Court (2002);
- The basic principles of international humanitarian law and, in particular, the Geneva Convention (IV) on the Protection of Civilian Persons in War (1949) and its Additional Protocols I and II (1977)¹.

Reality proves that the domestic violence phenomenon against women is a dramatic certainty in Romania, as a result the response means from a legal, social and educational perspective must come in an integrated manner. It is not enough just to improve the existing services, it is mandatory to enforce a

¹ Council of Europe Convention on preventing and combating violence against women and domestic violence. Istanbul, 11.V.2011. <https://rm.coe.int/168046253e>.

fundamental change to the system of services that help the victim, starting with the victim referral system towards the qualified institutions, counselling her and offering support when it comes to reintegration into society. In other words, the harmonization of the national legal provisions with those of the Istanbul Convention represents a perfect opportunity to build new services and adapt the existing ones to the daily reality.

By the Law no 30/2016, Romania ratified the Istanbul Convention, and, recently, the harmonization of the internal legislation with the Istanbul Convention provisions was accomplished by passing the Law no 174/2018, on amending and supplementing the republished Law no 217/2003 on preventing and combating domestic violence. Institutional reform, in the field of preventing and combating domestic violence, started 16 years ago, was strengthened by new regulations in 2018 and 2019, which places the Romanian system of preventing and combating domestic violence at the level of the European Union standards.

Thus, the National Agency for Equal Opportunities between Women and Men (ANES)¹ and the new legislative regulations, aim to support the victims of domestic violence by an immediate and coherent intervention from all the responsible institutions, and, in the same time, to increase the trust level of the victims in the intervention capacity of the authorities. In this regard, starting with December 2018, it is regulated as a central pillar, the Provisional Protection Order (OPP), an instrument of administrative content, a special form of protection for the victims of domestic violence, which targets to extend the police officers prerogatives in order to ensure the protection of victims by immediately removing the perpetrator from the quarters, in situations of immediate danger, in accordance with art. 52 of the Istanbul Convention². The new regulation creates an integrated approach focused on the victim and on developing new measures of preventing domestic violence acts (psychological counseling for the divorce cases with a history of domestic violence, monitoring protection orders measures to prevent their violation) and, equally, provides emergency intervention measures in cases of immediate risk.

The Provisional Protection Order (OPP) represents a recently dated measure which applies when the case of imminent danger for the health and security of the domestic violence victim and represents a complementary instrument to the protection order (OP)³. So, after release of the order by the policeman, the OPP will be confirmed by the prosecutor, based on the testimonies and proofs gathered by the policeman. Afterwards, the prosecutor has the duty to forward the OPP alongside with all the existing proofs in the file to a judge, who will pronounce by issuing a protection order. As a result, with this regulation the policeman will have the right and the duty to check and enter the victims' house and issue the OPP through which to remove immediately the aggressor, even if he is the owner of that property. This measure, although firmly challenged by the Ministry of Justice representatives, it is the only way to intervene in case of emergency and within the reach of the authorities, this allows to drive away the danger from the person in trouble. The OPP will be issued on the basis of a Risk Sheet⁴, through which the policeman will determine the degree of risk based on the spot assessment. If the risk for the victim

¹ Institutional mechanism with the role of integrating body at national level in the two fields of reference: equal opportunities and treatment between women and men and preventing and combating domestic violence, functioning as a specialized body subordinated to the Ministry of Labor and Social Protection.

² **Article 52 –Emergency restraint order** - The parties shall take the necessary legislative or other measures to ensure that the competent authorities are empowered to dispose, in situations of immediate danger, of a perpetrator of domestic violence leaving the home of the victim or person at risk for a period of time, sufficient to prohibit the aggressor from entering the home or contacting the victim or person at risk. Measures taken in accordance with this Article shall give priority to the safety of victims or persons at risk.

³ The protection order has been regulated in the Romanian legislation since 2012 by the Joint Order MAI & MMJS no. 146/2578/2018.

⁴ The model according to Ord.2525 / 2018 of December 7 can be consulted here - <http://www.mmuncii.ro/j33/images/Documente/Legislatie/O2525-2018.pdf>.

is high or very high, the policeman will issue an OPP by which the following measures can be ordered for the aggressor: Eviction from his home with the ban to return to the property as long as the OPP is valid, establishing a minimum distance to keep around the victim (at home, work place, school as the case), confiscating the house keys or weapons. Both the OPP and PO (Protection Order) will be monitored by the police, non-compliance with the measures disposed by the two instruments represents a contravention, for which the penalty of imprisonment from one month to 1 year is provided. With the monitoring process, the policeman will permanently check, by all means, that the aggressor complies with all the disposed measures (home visits, gathering information from neighbors, from the victim's workplace, school as the case).

After the release of the OPP, the policeman will make sure that the aggressors' rights are respected through measures that aim at the correct information about the OPP, more precisely, the guidance and orientation to a specialized social service for hosting and counselling. At the same time, for the first time in history there we have possibility of monitoring PO and OPP through an electronic system is being regulated.

The National Agency for Equal Opportunities between Women and Men, in collaboration with institutional actors, civil society, profile NGOs, has developed a complex set of tertiary level normative acts that includes: methodological norms and procedures on intervention in cases of domestic violence, regulation of police officer's obligations to ensure the execution of protection measures that may be ordered by the provisional protection order/emergency intervention procedure performed by the mobile team within DGASPC (general direction of social assistance) methodology for the aggressor to participate in psychological counselling programs. These legislative changes aim to implement measures to protect and care for victims of domestic violence:

- The joint order of the Minister of Labor and the Minister of Internal Affairs no. 146/2578 from December 2018 regarding the manner of handling cases of domestic violence by policemen, establishing the obligations of policemen to ensure the implementation of protection measures that may be ordered by the interim protection order.
- Order no. 2525/07.12.2018 of the Minister of Labor and Social Justice regarding the approval of the risk assessment carried out by the staff within DGASPC, from the perspective of the provision of social services, based on a specific instrument and the procedure for emergency intervention in cases of domestic violence.
- Order no. 2524/07.12.2018 of the Minister of Labor and Social Justice regarding the participation methodology of the aggressors in psychological counseling programs, organized by public or private specialized services.
- Order no. 28/03.01.2019 of the Minister of Labor and Social Justice by which the new standards of minimum quality for social services in the field of domestic violence were approved.

It is also important to mention that in resolving divorce cases, in which one of the partners was found guilty of committing acts of domestic violence, the competent courts may order, ex officio or at the express request made by the other spouse, against the aggressor, the measure to participate in special psychological counselling programs organized by public or private specialized services.

Conclusions

Besides preventing and combating domestic violence policies, which the National Agency for Equal Opportunities between Women and Men is in charge of, once with ratifying the Istanbul Convention the institution develops a set of measures which represent the National Strategy for 2018-2020, this document being based on an integrated approach, having as central point the two areas of activity of the institution - Domestic Violence and Equal Opportunities, being approved according to GD. no. 365/2018¹. The content of the strategy targets objectives such as improving the legislative framework and ensuring the uniform implementation of primary legislation through the adoption of secondary and tertiary legislation, developing social services appropriate to identified needs and ensuring easy access, quality assistance to all victims, ensuring measures for perpetrators, developing and consolidating professional skills through training and preparation adapted to different types of intervention of specialists, developing collaboration relations between internal partners and between the Romanian state and other states or bodies involved in preventing and combating domestic violence, developing nonviolent attitudes and behaviors in order to achieve the goal of “zero tolerance” for domestic violence. The Strategy measures have been the subject of proposed objectives in all European and Norwegian funded projects currently being implemented with international partners in the field of preventing and combating domestic violence and gender-based violence.

All these has been contributing to the improvement of the Romanian image internationally through the proposed objectives and the achieved results in the field of preventing and combating domestic violence and violence based on gender differences. Thus, examples of good practice have been presented at an international level by the Romanian specialists, representatives of both the private and the government sector, these being considered reference points in the harmonization of the legislation with the provisions of the Convention from the involved countries². It is worth mentioning that after two years from the adoption of the principles and the promotion of actions in favor of gender equality within the “HeForShe”³ Campaign, at the 72nd Session of the United Nations General Assembly, on September 18-22, 2017 in New York, Romania received the title “Champion Impact 10x10x10”⁴ by virtue of the commitments taken upon and promoted within the frame of the campaign⁵.

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¹ The content of the GD. no. 365/2018 can be consulted by accessing the following link. <http://www.mmuncii.ro/j33/images/Documente/Legislatie/HG365-2018.pdf>.

² <https://ukraine.unfpa.org/en/news/ukraine-plans-tackle-gender-based-violence-2030>.

³ Solidarity campaign for women's emancipation initiated by UN Women. Its purpose is to promote equality by encouraging men to get actively involved in the fight against inequality between women and men, launched on September 20, 2014, developed by UN Women, to which Romania joined in 2015.

⁴ [https://ro.wikipedia.org/wiki/Campania_HeforShe#Proiectul_IMPACT_10x10x10\[6\]](https://ro.wikipedia.org/wiki/Campania_HeforShe#Proiectul_IMPACT_10x10x10[6]).

⁵ <https://anes.gov.ro/aurelia-gratiela-draghici-secretar-de-stat-anes-a-participat-in-perioada-18-22-septembrie-2017-la-new-york-la-segmentul-de-inalt-nivel-al-celei-de-a-72-a-sesiuni-a-adunarii-generale-a-onu/>.