

ROMANIAN INSTITUTE FOR HUMAN RIGHTS

DOMESTIC VIOLENCE

Paradigms and Judicial Practice

Editors

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FOREWORD

Carmen Nemeş, lawyer
President of the ANAIS Association

*Jurisprudentia est divinarum atque humanarum rerum notitia justi
atque injusti scientia.
(Jurisprudence is knowledge of things divine and human, the science of
the just and the unjust).*

Today, jurisprudence is understood as the judicial practice of the courts. Jurisprudence has authority when it represents the will of the legislator, but it cannot replace the law. Jurisprudence and doctrine, even if they are not sources of law, are of great importance for practitioners, as they are useful tools both in the interpretation and application of the provisions of normative acts, and in the improvement of the legislation, when it comes to *ferenda law*.

The particularities of each trial, the way in which it is judged, small differences between facts can lead to big differences in terms of legal interpretation. From this point of view, unitary practice is important: a small difference in facts should not lead to large differences in matters of law, or to large differences of opinion between magistrates in application of the same legal grounds.

The phenomenon of domestic violence should not only be addressed from a legal or a psychological perspective; it is so complex that a single approach and a single type of expertise would not be enough. Through my experience, I understood that all the acquired knowledge proves to be insufficient for a more accurate analysis of a case, that the opinions of other experts in different fields are needed, and that all relevant actors, together, can mitigate this phenomenon.

It is very difficult for the Romanian society to understand the seriousness of this scourge (since it still mainly believes in the saying “spare the rod and spoil the child”¹). It is also difficult for the victims (who blame themselves instead of asking for help), while the aggressors keep finding excuses

¹ In Romania there is a saying according to which “beating came from heaven” and is generally used in reference to children and women.

(invoking numerous reasons for justifying the aggressions). Last, but not least, field practitioners do not always deeply manage this phenomenon (since they do not benefit from lifelong learning courses, so that they can understand the psychology of a victim).

Therefore, in addition to the cases collected from the legal practice of Anais Association, we felt the need to invite specialists from various other areas of expertise, such as psychology, gender equality, multiculturalism, refugees, to join us. Together, we aimed to provide an analysis of domestic violence in general, but also from the perspective of violence against women and girls. The specialists and the editors of the paper have tackled certain topics with the aim of supporting the practitioners by explaining some paradoxes, dismantling various myths, analysing certain behaviours that should be avoided, and inviting them to assess the cases of domestic violence beyond the time required for medical care.

At the beginning of the paper, I chose to follow a general approach on the phenomenon of domestic violence, by identifying the main sources of law, both in the material sense (as generators of rules in this field), as well as in the formal sense (as specific forms of expression of rules). In the field of preventing and combating domestic violence, in addition to the normative acts and sources of law emanating from the competent Romanian institutions in the field of domestic violence, which have legislative powers, there are also the international regulations to which Romania adhered to or which were ratified. In order to better analyse the need to adopt normative acts in Romania, it is necessary to understand the general context in which the first international norms appeared and how they later became sources, both in Community law and in Romanian law.

Further on, author Giulia Crişan, lawyer and practitioner, complements the general approach to the phenomenon of domestic violence by explaining the importance of an integrated approach to each case. Having 8 years of experience in the ANAIS team, during which she provided legal advice and assisted in court a considerable number of victims of domestic violence, the editor is a supporter of the multidisciplinary approach to cases of domestic violence and presents a summary of the effects of domestic abuse.

Oana Băluţă, Associate Professor Doctor, analyses gender stereotypes and violence against women, focusing on how gender stereotypes can distort the reactions of the justice system. Andreea Braga, PhD in Political Science approaches the subject of prejudices faced by victims of domestic violence in

the process of access to justice or support services, highlighting that they are built only on identity differences.

Fatma Ruxandra Yilmaz, Muslim women's rights activist, PhD Student in Political Science SNSPA, and Carolina Marin – Senior Protection Associate, UNHCR Romania, debate Muslim women's condition and asylum-seeking or refugee issues.

Inaccessibility to the judiciary and distrust in the authorities in general cause these women to be permanent victims. Fatma Ruxandra Yilmaz tries to guide the reader not to fall into the trap of multiculturalism, and Carolina Marin draws attention to the fact that the vast majority of Asylum seekers applicants and refugees come from various countries of origin and belong to cultures that are extremely different compared to ours. Thus, the community (national, ethnic, linguistic, religious) has an important role to play in addressing issues such as domestic violence, divorce or custody of children.

Mihaela Săsărman, President of the Transcena Association, approaches the topic of the domestic aggressor, a subject seldom addressed in domestic violence. The aggressor is the responsibility of the whole society; the sanctioning measures are an extremely controversial subject.

#ȘiEuReușesc is a project of the A.L.E.G. Association, developed in partnership with the ANAIS Association within the Community of Winners Bucharest. "We help without imposing our own solutions and we understand that everyone's life story is unique", says Camelia Proca, education specialist for gender equality within the A.L.E.G Association. She presents the purpose of building such communities and the role that the transition from victim to survivor can play in the life of a woman who has experienced domestic violence.

The first chapter ends with an essay signed by Andreea Olteanu, PhD in Psychology. She discusses about the coping process and psychological stress of all victims, in order to understand why those who look at everything from the outside have so many paradoxical reactions regarding the management of such cases, and the exit of the victim from domestic abuse and violence.

In the second part of the paper the editors did not analyse from a legal point of view the court decisions, as is customary in a classic work of judicial practice, but they wanted to convey the readers another message: it is important to have tools for protecting the victims of domestic violence. Therefore, the authors added to each case a separate note indicating the victim's evolvement after obtaining a protection order, or after the rejection of their application.

To end the violence, victims set out on a difficult journey, with trials, hesitations, obstacles, etc. After requesting a protection order, this legal instrument can change their lives in some way or another. If they are granted the protection order, the victims get out of the relationship much easier and even if they reconcile with the aggressor, the power and control relations are changed within the couple. Practice within the Association proved that if their request for a protection order is rejected, usually victims are reluctant to go to court, or to other specialists in the future and their trust in the authorities considerably diminishes, while the control instituted by the aggressors will intensify. Sometimes victims refuse to come before the authorities (criminal investigation bodies, courts) for fear of standing face to face with the aggressor. For victims to stand in front of the court, of the aggressor and the lawyers, and to talk once again about the experience, given the trauma caused by the violence to which they were subjected is an act of courage, but also a proof that they need help to get out of the situation of abuse.

It is important to know that victims of domestic violence whose cases have been presented in this paper have not returned to the violent relationship, but for this to happen, it took great efforts including from the specialists of the ANAIS Association (see the case of the victim with 12 protection orders, presented at the end).

PART ONE

Paradigms of violence against women

DOMESTIC VIOLENCE FROM SOURCES OF LAW TO JURISPRUDENCE

Carmen Nemeș, lawyer

President of ANAIS Association

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Domestic violence has always existed in all countries of the world and in all strata of society, irrespective of the cultural, religious, educational or social level. The starting point from which states have understood that domestic violence must be regulated and criminalised differs from country to country, depending on the degree of tolerance of the population towards domestic violence in all its forms. In this respect, it turned out that, for example, Romania's population is more tolerant of domestic violence compared to the average level of the European Union.¹

Thus, in some societies, manifestations of protection of victims have existed since the beginning of the last century. For example, in Switzerland, as early as in 1913, a centre (a "home") was set up in Lutry for single mothers who broke up ties with their families. Such first reactions of communities, especially religious, to the phenomenon of domestic violence have existed in other countries and the examples can continue.²

It was only in the '70s, along with the first public manifestations of women' emancipation that the situation of women as victims of domestic violence began to be included on the states' public agendas.

After two decades, since 1990, most legal systems have recognised, through the adopted legislation, the need for temporary preventive measures

¹ C. Nemeș, *Ghid de diseminare pentru abordarea integrativ-sistemică a egalității de șanse, combaterii violenței domestice și a traficului de persoane*, București, 2015. (Dissemination guide for the integrative-systemic approach to equal opportunities, combating domestic violence and human trafficking)

² Protocol de intervenție în ajutorul profesioniștilor – violența în familie – Depistare Sprijin Orientare pentru victimele violenței domestice, realizat și adaptat după modelul de intervenție „DOTIP” elaborat de Fundația Malley Prairie din Lausanne, Elveția. (Intervention protocol in support of professionals in combating domestic violence – Detection Guidance support for victims of domestic violence, developed and adapted according to “DOTIP” model by the Malley Prairie Foundation in Lausanne, Switzerland).

aimed at the provisional protection of a person against any injury, by prohibiting the aggressor to approach the victim, her home or workplace or to contact her by any means. In order to be useful in ensuring the immediate protection of victims of domestic violence, laws of various states have provided, depending on the particularities of each jurisdiction, more or less severe sanctions, either temporary, or permanent, taken by civil courts for minors and families, while in other states the incrimination is made by a norm of criminal law.

In 1993, the United Nations (UN) adopted a Declaration on the Elimination of Violence against Women, in which this type of violence is defined as follows: “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. The UN considers this type of violence to be a violation of women’s human rights and fundamental freedoms.

In 1994, the Commission on Human Rights appointed a Special Rapporteur in the field of domestic violence, whose mission is to collect detailed data and propose recommendations at national, regional and international level, in order to eliminate violence against women and its causes. Also in 1994, the International Conference on Population and Development, held in Cairo, addressed the issue of equality between women and men in terms of sexual and reproductive health and reproductive rights. The proposed Programme of Action focused on ending the trafficking of women and children, promoting women’s education as a measure of protection against domestic violence and on the establishment of programs for victims of domestic violence.

The progressive impact of international declarations and documents determines states to define their policies for the prevention of domestic violence. Thus, European states, members or non-members of the European Union, must also take into account both the recommendations of the Council of Europe and the documents adopted by the United Nations, in particular the Platform for Action, adopted at the Fourth World Conference on Women, organised in 1995 in Beijing. The Beijing Platform for Action provides that violence against women is one of the 12 obstacles in ensuring women’s rights as well as a violation of human rights.

In 1997, the World Health Organization (WHO) also recognises violence against women as a priority issue of public health, which requires special action strategies.

The Committee of Ministers of the Council of Europe adopts various recommendations to the Member States on the protection of the child against ill-treatment, domestic violence, assistance to victims, the prevention of victimisation and the protection of women against domestic violence. The purpose of these documents is to define domestic violence in a unified way and to identify the common factor of this phenomenon at European level.

Council of Europe, by Recommendation 1582 of 27 September 2002, “considers acts of domestic violence to be criminal acts and calls on the States to recognise that they have an obligation to prevent, investigate and punish all acts of domestic violence and to provide protection to its victims.”

In parallel with the adoption of the first international legislative documents, more and more events, works, studies, public statements welcome the movement to prevent and combat the phenomenon of domestic violence. Thus, while the first incriminations of domestic violence in all its forms begin to be included in criminal codes of various states, more and more voices are separating domestic violence from other types of aggression:

“Aggression is used with the aim to define everyone’s territory, everyone’s right. It is a force that builds and defines the individual. Violence, on the other hand, invades and violates boundaries. It is a force for destructing others and for self-destruction. An act of violence is defined as any infringement on the physical and mental integrity of the individual, together with a feeling of coercion and danger”.³

Moreover, the World Health Organization in the World Report on Violence and Health (Geneva, 2002) states that women are the main victims of domestic violence. This aspect has also been recognised in other documents: *“It may happen that women are violent with men and that homosexual relationships are not exempt from violence, but in the vast majority of cases, women are victims of violence from their male partner. Violence in the private sphere is primarily male and domestic. Even if the phenomenon is interactive and it involves two parties, symmetrical or equal violence is rare.”*⁴

In this entire context, after 1990, in Romania, the awareness of society, on the one hand, and that of the legislator, on the other hand, on the scale and gravity of the phenomenon of domestic violence, began to increase. Domestic violence became a topic of public debate in Romania only after 1995, amid the problems of Romanian society, in transition at that time, with the involvement

³ R. Perrone, M. Nannini, *Violență și abuzuri sexuale în familie*, ESF Editor, Paris, 1996. (Violence and sexual abuse in the family)

⁴ D. Weltzer-Lang, (1991) *Les hommes violents*, Lierre & Coudrier, Paris

of organizations that provided services and assistance to victims, which contributed to public awareness through information campaigns. Starting with the discussion on the situation of the abandoned children to the reasons for abandonment, to the identification of social problems faced by families, the existence of the phenomenon of domestic violence came to be recognised. At that time, the Romanian Criminal Code did not provide for domestic violence as a separate crime, and even now, it is not regulated separately in the new Criminal Code, but only as an aggravating form for committing other crimes. Thus, the possibility to intervene was initially limited and depended on the way in which the state institutions applied these provisions.

Through its programs on combating violence against women and domestic violence, the National Coalition of NGOs has gradually become more and more involved in carrying out extensive awareness and information campaigns on the phenomenon of domestic violence. The Coalition advocates for the promotion of legislation and appropriate legislative practices, while providing support to victims through direct psychological counselling, legal counselling, social assistance, intermediation of jobs and educational programs.

In addition to the above activities, representatives of NGOs working in the field of domestic violence actively participate together with representatives of relevant public institutions in the field, in continuous training, exchange of good practices, as well as in relevant projects implemented in Romania.⁵

Thus, in the Romanian legislative development, several normative acts were likely to change the way of preventing, combating and criminalising the phenomenon of domestic violence due to the efforts of civil society, public institutions with responsibilities in the field and, last but not least, with the support of the legislator.

Through future regulations, Romania will have to continue to harmonise the national legislation with that of the European Union, to take into account the *acquis communautaire*, but at the same time to respect the principle of subsidiarity, adapting the general norms of international law to the social, legal, legislative and institutional reality of our country⁶.

⁵ Report submitted by Romania according to Article 68 para. 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) published by GREVIO, February 2020

⁶ C. Nemeş, *Ghid de diseminare pentru abordarea integrativ-sistemică a egalității de șanse, combaterii violenței domestice și a traficului de persoane*, București, 2015. (Dissemination guide for the integrative-systemic approach to equal opportunities, combating domestic violence and human trafficking)

Also, the fundamental principles of human rights, the principle of equal treatment and non-discrimination, enshrined in the Treaty of Lisbon, together with the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, which laid the foundation of the European Union have become common to all Member States in a society characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

The Charter of Fundamental Rights of the European Union, in Articles 21 and 23, prohibits discrimination of any kind and provides equality of opportunity and gender between men and women, thus developing the European values and principles set out in Article 2 of the Treaty of Lisbon. These common values and principles involve Member States in taking responsibility for both their national communities and the European community of which they are a part of.

Subsequently, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul, May 2011), based on European principles and values enshrined in the Treaty of Lisbon, in the Charter of Fundamental Rights of the European Union and in other normative acts became a complex legal instrument of international cooperation in terms of combating violence against women, protection measures for victims, punishment of aggressors and other related measures.

By Law No. 30 of 2016, Romania ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – known in brief as the Istanbul Convention. By ratifying this Convention, the Government sent a positive signal regarding Romania's firm commitment to respect and promote a series of measures to ensure adequate prevention and combat of the phenomenon of violence.

The provisions of the Convention require signatory States to create mechanisms to ensure adequate protection for victims, as well as a greater awareness on the effects of this phenomenon. Violence against women certainly violates the rights protected by the European Charter of Fundamental Rights, including the right to life, dignity and the prohibition of the use of violence and torture. The obligations taken up following the signing the Convention on Human Rights require Member States to set up an appropriate support system for victims of this type of crime. This support, provided in the text of the Convention, must include well-trained staff both in the field of justice and in that of counselling and rehabilitation of victims, through means such as medical, financial and social assistance provided by public or private institutions.

Violence against women has no geographical, economic, social or cultural limits. Thus, social studies on gender-based violence estimate that one-fifth to one-quarter of all women in Europe have faced forms of physical violence, at least once in adulthood; more than a tenth faced sexual violence, which involved the use of force; 12-15% of women and girls in Europe are victims of domestic violence and trafficking in human beings for the purpose of sexual exploitation which *“is an unacceptable violation of human rights and a modern form of slavery; whereas economic recession also spawns increased violence in close relationships, and austerity measures affecting support services are making women who are victims of violence even more vulnerable than usual”*⁷.

Starting from the fact that women are the main victims of gender discrimination, domestic violence and human trafficking, we can say that, regardless of limitations, feminism has contributed to the change in the status of women and gender relations, the recognition of rights and fundamental freedoms. New areas of research have emerged, while political movements had a major impact on the public, social and private life and on the media, leading both to changing the status of women in society and to strengthening the rights of the child.

The extent and gravity of the phenomenon of domestic violence sends alarming signals since in Romania one in four women was physically or sexually assaulted by her partner, and 75% of these cases remain unreported, while every woman has experienced a form of violence⁸ at least once in her life.

Thus, a series of continuous and coordinated measures are needed which, on the one hand, should limit the phenomenon through preventive measures and manage the recurrence of acts of violence from the perspective of aggressors, and on the other hand, come in victims' support. These measures, taken through legislative norms, should be articulated in such a way as to provide victims with real double protection (social and legal) and offer measures to reduce the recidivism of perpetrators (i.e., in Norway, following the implementation of the “A life without violence” project in 2014-2017,

⁷ I.C. Zuber, Report A7-0073/2014 on Equality between women and men in 2012, 2013/2156 (INI) Motion for a Resolution [Article 157 para. (4) of the Rules of procedure for replacing the motion for a non-legislative resolution A7-0073/2014 EU Parliament Resolution for equality between women and men in the European Union – 2012.

⁸ EU Agency for Fundamental Rights UE, (2014) https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf

statistics indicated that 91% of perpetrators did not repeat acts of violence due to national programs and budgets invested in prevention and control measures)⁹.

At the same time, the widely-publicised tragic domestic violence incidents in recent years, resulting in the death of victims (the cases of Perla, Mogoșoaia, Calea Victoriei, etc.) have become negative benchmarks in this field, leading to real changes in legislation and, especially, in the mentality and the working manner of all the professionals with attributions in the field.

They sometimes approach this phenomenon from a single perspective, evaluating it through their own experiences sometimes corroborated with a *stricto sensu* legislative interpretation, which is cold and impersonal based on evidence only, without resorting to the *lato sensu* approach. This means that, in all cases, practitioners (whether a lawyer, judge, prosecutor or police officer) should judge according to the provisions of the law in conjunction with a complex analysis of the case and not according to their sense of justice (*cerebrina aeguitas*)¹⁰.

As violence against women (wives, partners, daughters, mothers, etc.) whether physical, sexual, psychological or otherwise is a major obstacle to equality between women and men and a violation of women's fundamental rights, with this paper, we propose a different approach, a complex analysis of the phenomenon of domestic violence beyond stereotypes and prejudices.

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⁹ *November Project, Domestic Violence & Multidisciplinary Cooperation*, Oslo Police District, 2018.

¹⁰ C. M. Molea, *Maxime juridice antice*, Ed. Militară, București, 1995 (Ancient legal maxims)

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THE IMPORTANCE OF THE MULTIDISCIPLINARY APPROACH SEEN THROUGH THE EYES OF A PRACTITIONER

Giulia Crişan, lawyer

Probably many of the readers of this paper are already familiar with the mission and actions of the ANAIS Association. The activity of the ANAIS team has been very intense from 2012 until now. The specialists who worked in the Centre for Prevention and Combating Domestic Violence and in the Emergency Reception Centre for Victims of Domestic Violence – Casa Invicta not only fought against the clichés about domestic violence, but they also analysed many aspects of the phenomenon, providing knowledge on its effects on the victims and their children and obtaining protection measures for them.

Domestic violence is most often a combination of physical, psychological and sexual aggressions on the background of economic dependence on the aggressor. Violence is not only beatings, injuries or broken bones, but also threats, insults, humiliation, deception, blackmail, denigration, impeding professional development, violent and forced sexual relations. Economic violence varies from reducing the available budget and extreme control over its use by the victim, to blocking access to the bank account, forced involvement in reckless financial transactions, non-payment of maintenance obligations imposed on the aggressor, etc.

Domestic violence often means action, but the lack of physical action may as well cause harm, especially through psychological or emotional abuse: creating a hostile environment; reluctance to engage in common activities, ignoring family needs, emotional apathy towards the mother and/or the children.

Domestic violence does not necessarily occur only in couples that are declared married by the civil registrar and/or by the church. It takes place between relatives who live under the same roof, between life partners, between parents and children.

Faced with these (explicit or implicit) acts of violence against women, society sometimes prefers to adopt a passive attitude.¹

¹ The General Inspectorate of the Romanian Police reported, for the year 2019, 25,968 cases of beatings or other domestic violence, with a number of 26,398 victims, 97 cases of

THE EFFECTS OF DOMESTIC VIOLENCE ON WOMEN

Women who suffer from domestic violence need much more medical care than other women do. Many times, a woman has to go to the doctor or the Hospital's Emergency Units because the aggressor has cut her with a knife or burned her, because she has suffered fractures, wounds, because she contracted venereal diseases from the partner, or for an abortion.

The victim permanently lives with the fear of being wrong, of saying or doing something that could trigger the violent reaction of the aggressor, she feels insecure and powerless in her own home, she is constantly restless for her and her children, she has sleep and digestion disorders and her mental state is gradually deteriorating.

Insults, humiliations, threats, which often precede or accompany physical violence affect the victim's self-esteem, cause her to be passive, unable to make decisions, to fall into depression or think about suicide; these are "wounds" that need to be treated and require specialised intervention and long time for healing.

In an age when one's image in the eyes of the community is more important than the self-image, some victims try to downplay or deny the ordeal they go through. They can hardly admit that they have been abused for years; they accept a degrading treatment and remain prisoners of an abusive marriage just for the sake of children. Others give up their jobs, leave home to take care of their children, looking for the lost balance since the first family quarrel and the first slap. Some choose to escape into an illusory space, resorting to alcohol or drugs to try to survive the suffering and pain of a ruined personal and family life. Some commit suicide, as they cannot find anywhere the helping hand they need.

If a woman decides to separate to escape a failed and terminated relationship, she faces financial issues: starting from the cost of the divorce (which can be a long and difficult process in a violent relationship), to the difficulty of caring for their children by themselves. These material hardships

sexual assault, 83 cases of sexual intercourse with a minor, 83 cases of murder. The General Prosecutor's Office reported, for 2019, 1,459 defendants sent to court for crimes of domestic violence and 1700 victims, of which 661 minors. However, the police issued, in 2019, a number of 7,986 provisional protection orders, of which 2,958 have been transformed by the courts into protection orders. In turn, the courts issued 7,899 protection orders, according to General Inspectorate of Police reports. The same institution reported, in the first 4 months of 2020, a number of 16,629 police interventions in cases of domestic violence.

are complemented most of the time by the social burden tributary to obsolete mentalities. “A woman who leaves her home has not been able to be a good wife, she failed to handle the couple’s problems and took the children away from their father” – how many times have you not heard these clichés, stated in one way or another?

Even though every woman reacts differently, all victims of violence suffer from loneliness and social indifference: they are often not believed for the troubles they face, because, outside the family, their partner is regarded as a “normal”, “very kind”, “cultured”, “polite”, “perfect” person, etc. or they lose their friends, feel isolated, overwhelmed with doubts, shame, and guilt.

It is important to listen to the victim, to believe what she says, to help her decide how to get out of the abusive relationship so that she can regain control over her own life. It is important for the victim of domestic abuse to find support; a place where nobody judges, ignores or shuns her. It is important for the woman victim of domestic violence to tell her story, her side of the truth, and that someone listens to her and help her recover psychologically and socially. And this is what we are doing at the ANAIS Association.

PSYCHOLOGICAL VIOLENCE, THE HIDDEN FACE OF DOMESTIC VIOLENCE

Most often, those who encounter a victim of domestic violence only see the tip of the iceberg: a disoriented, frightened, insecure woman, perhaps unable to tell her story coherently and desperate for a solution, if possible instantaneous. A relative, a friend, co-workers, neighbours, government officials can see the physical injuries and assess their severity according to the days of medical care required. Psychological wounds are seldom seen; most often, they become visible in extreme situations, when they require radical interventions. Psychological violence is about creating fear, terror, the possibility of physical abuse, the destruction of life purposes, manipulation, isolation, control and the creation of an “alternate” reality for the victim.

In addition to the direct target, which is often the woman, there are collateral victims: children exposed to domestic psychological terror. Many of them develop pathologies that require many hours of psychotherapy, or they drop out of school; they enter destructive entourages, or they become a part of family abuse. Often, aggressive partners are themselves the product of

dysfunctional or violent families. However, most of the time they refuse the help of a psychologist or psychotherapist, even if the court demands it.

VIOLENCE MANIFESTS MOST OFTEN IN THE PRIVATE SPACE

“Most of the time, the aggressor exerts violence against members of his family at home. It is a place that he knows very well, where there can be no surprises, where there are no strong people to intervene in favour of the victim, where no one can interrupt him, and it is easier to hide the effects of violence. In most cases, even when the injuries to the victim are serious, the aggressor is the one who decides if the victim needs to receive medical care, if she can go to the hospital. The ambulance is rarely called (because it would involve access of medical staff to the victim’s house), and if the victim ends at the hospital, the aggressor imposes a false scenario that will be presented to the medical staff, in order to hide the real cause of the injuries. Carrying out acts of violence in private also affects, in fact, the evidence that can be adduced in cases where the victim files a complaint, or the judicial bodies are notified *ex officio*.”²

A MULTIDISCIPLINARY APPROACH WITH REGARD TO THE VICTIMS

Within the ANAIS Association, the needs and issues of victims of domestic violence are addressed multidisciplinary by a team of specialists consisting of social workers, lawyers, psychologists, psychotherapists, psychiatrists, sociologists. The statistical data collected by the Association or obtained from the institutions with responsibilities in the field of domestic violence are analysed by sociologists, and, based on these findings, new projects and initiatives are developed.

The first specialist with whom the victim comes into contact within the Association is the social worker, who performs the evaluation and social guidance of the victim, through a standardised case file, and depending on her needs, she is referred to one or more specialists. Each specialist evaluates

² C. Voicu, judge – *Despre violența domestică – în „limbaj simplificat”* – (About domestic violence in a simplified language)

<https://www.juridice.ro/665852/despre-violenta-domestica-in-limbaj-simplificat.html>.

cases that require multidisciplinary approaches, after which a team analysis is performed. As an analogy, it is similar to a patient with multiple injuries arriving at the hospital and doctors with various specializations decide which should be the first intervention and what follows. Usually, a case that requires a complex approach has a history and heavier psychosocial burden. Such cases are often severe ones.

We wish all victims who ask for help to be able to get out of abusive relationships, but for some the call comes too late, or the community or society does not give them the support they need to get rid of their dependency on the aggressor.

That is why we must be aware that the support of the mother-victim is an effective way to protect her children, on whom too few turn their attention to. That is why they sometimes identify with the abusive father, who is perceived as the most powerful image of authority and tend to despise their mother. In such a case, in adulthood many of them could reproduce the paternal model, generating in turn abusive situations in their families. In other cases, children in abusive families take on adult responsibilities, trying to protect their mother or younger siblings. And what could be sadder than a child giving up his childhood to take on the burden of maturity too soon?

Domestic violence has a cyclical nature, which does not stop by itself. As in many less-than-optimal areas of our lives, it is also about education, support, cooperation between structures whose purpose is to maintain a balanced society with healthy values.

The authors conceived this volume as a working tool, a support, a source of consultation for those who strive that our society becomes more and more balanced. It may also represent, if you will, a gesture of reverence for those who struggle, with each case, to slow down this cycle of domestic violence: social workers, police officers, prosecutors, judges, lawyers, psychologists, doctors, psychotherapists.

GENDER STEREOTYPES AND VIOLENCE AGAINST WOMEN. ARE JUSTICE PRACTITIONERS IMMUNE?

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During the trial and management of domestic violence cases, it is necessary to be aware of the role of stereotypes. Adrian Neculau states that these “can be seen as distorted, forgotten and rigid social representations”, which take shape in a certain socio-cultural context and “they are induced by the cultural-ideological model, by mental structures shared by members of a community” (Neculau, 1998, p. 65; Băluță, Radu, 2015, pp. 163). Gender stereotypes are beliefs and opinions about the characteristics of women and men, with the attributes of femininity and masculinity. Numerous studies have drawn attention to gender stereotypes found in the application of family law, case assessments and convictions. Gender not only reflects the beliefs of societies and cultures about women and men, their roles, behaviours, attributes, but also creates hierarchies between women and men. The Istanbul Convention recognises that “gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3d)¹.

Gender stereotypes are a source of gender inequality. Violence against women is also a manifestation of gender inequality, more precisely of social practices that devalue women. The rules that establish men’s domination over women legitimise various forms of violence. People judge women’s behaviour when violence is directed against them and traditional justifications are invoked such as: “She deserves to be raped, why is she wearing such provocative clothing?”, “She deserves to be beaten, why doesn’t she keep her mouth shut?”. In a society where there is gender inequality, there is a tendency not to believe women, even when they report violence.

¹ The Council of Europe Convention on preventing and combating violence against women and domestic violence <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e> accessed on 29 June 2020

Judges, prosecutors, lawyers do not only come with academic training, professional experience, good intentions in solving cases, but also with their own values, beliefs and opinions. Gender stereotypes can distort the responses of the justice system, according to studies. For example, in the United States, many judges and members of the courts have identified a lack of understanding of the dynamics of domestic violence and the circumstances of the victim and the perpetrator, violence is often considered trivial and unimportant, and the victim's testimony is not believed.²

The study conducted by Majda Halilović and Heather Huhtanen in 2014, "Gender and the judiciary. Selected findings and recommendations on the implications of gender within the judiciary of Bosnia and Herzegovina", presents the results of a research with practitioners from the justice system in Bosnia and Herzegovina. During the interviews, judges said that they decide on punishments exclusively based on the facts and their relationship to the text of the law. But the results of the online questionnaires showed that they also take into account social factors, for example it is important if the aggressor is sorry, it is considered relevant if the victim is difficult or "quarrelsome"; "when the aggressor is the main source of income, they avoid to sentence him to prison.³ In cases of sexual assault, there are studies that show that gender is important in prosecuting cases and convicting sexual assault. Ivana Radačić has identified the fact that the Zagreb District Court is resorting to problematic mitigating circumstances. For example, in a case analysed by her, the court considered the aggressor's jealousy as mitigating circumstance. In U.S. courts, victims of rape and sexual assault are tried based on clothing, lifestyle, reputation, while the same standard is not applied to men.

The European Court of Human Rights judgement of 15 March 2016 in the case of *M.G.C. v. Romania* (Application No. 61495/11) states that the court considered relevant "the fact that the applicant was scantily dressed"⁴. And this case refers to an 11-year-old girl. Usually women (not minors) are held accountable for how they dress, but this is an example of a perception rooted in gender inequality. This is a way of thinking that blames the victim, but

² Report of the Special Joint Committee on Gender Bias in the Courts — May 1989, University of Baltimore Law Review: Vol. 20: Iss. 1, Article 2. <http://scholarworks.law.ubalt.edu/ublrl/vol20/iss1/2>, p. 28, accesat în data de 29 iunie 2020.

³ Majda Halilović and Heather Huhtanen *Gender and the judiciary. Selected findings and recommendations on the implications of gender within the judiciary of Bosnia Hertzegovina, 2014, p 10*

⁴ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-161380%22%5D%7D>

also makes a stereotype of the sexuality of men (their sexuality is active) and normalises assaults, because it considers them as a feature of instinctual sexuality.

It is women who must have been at fault for sure. It is women who have provoked. This way of thinking makes the aggressor less responsible for his actions. There are various traditional justifications for violence that devalue women. These may include suspicions of “sexual promiscuity”, infidelity, questioning male authority, role inadequacy (they are not good daughters, good mothers, or good wives).

Problematic are the pleadings in courts, where the past sexual behaviour is considered a grounded reason to discredit the credibility, the moral value of a woman who is the victim of the assault. It is a serious error to consider that a previously expressed consent is valid for the rest of the woman’s life, regardless of partner, or of the context. Sex life before the assault does not prevail over the mandatory requirement of consent.

Women’s credibility is being questioned. The interviewed judges in Halilović and Huhtanen’s⁵ study state that it is important if you are a young woman. A judge states: “If she is a witness to a murder that took place during the night, I hear comments about what she was doing so late in a bar. They ask her if she usually changes friends. Lawyers are thus trying to destroy the credibility of the witness. Some behaviours are acceptable for young men, but not for young women. Because of this, young women (...) avoid testifying. Lawyers comment on the way they dress, while such comments are not made with reference to men”.⁶

Stereotypical perceptions of women and men show that gender influences the way justice is done. As unpleasant as the observation may be for legal professionals, the consequences are infinitely more unpleasant for the victims, for those who seek justice in courts. We are people living in a patriarchal socio-cultural context that devalues women and questions their moral probity. We have been exposed to various discourses on women and men since we were little. Judges, magistrates, lawyers should practice their profession impartially, outside the beliefs and values of the socio-cultural system. But studies, judicial practice and the experience of those who provide assistance to victims of gender-based violence – whether it is domestic violence, rape,

⁵ Majda Halilović and Heather Huhtanen *Gender and the judiciary. Selected findings and recommendations on the implications of gender within the judiciary of Bosnia Herzegovina, 2014*
⁶ Ibid.

sexual assault – tell us that such beliefs that affect impartiality and objectivity are sometimes reiterated in courts.

Awareness of stereotypes is a challenge for us all. Understanding their negative effects on the justice system is necessary, as it is particularly important to avoid them, in order to increase the impartiality of the justice system. There are training opportunities that need to integrate these issues and the impact of gender stereotypes. It is important for those involved in the act of justice to be aware of the influence of gender on day-to-day court activities, procedural practices and decisions.

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INTERSECTIONALITY AND DOMESTIC VIOLENCE

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On their path to a safe life, once they decide to denounce the aggressors, many of the women victims¹ of domestic violence face prejudices in having access to justice or support services, prejudices built on the basis of identity differences. Moreover, the differences between women and the intersection between these differences – starting from the socio-economic status, ethnicity, age, level of education, religion, place of residence, etc. – make the domestic violence experienced by each of them pose different obstacles. To capture these obstacles and the experiences of women generated by racism, classism, and sexism against victims of violence, Kimberlè Crenshaw (1991) introduced the concept of *intersectionality*.

When analysing domestic violence, it is necessary to go beyond the limits of our own experience, leaving open the possibility of a deeper understanding, beyond stereotypes and prejudices about victims and aggressors. Recognised by the Council of Europe as a result of historically unequal power relations between women and men², domestic violence is stereotypically associated with poverty, alcohol consumption, lack of education or belonging to an ethnic minority, such as the Roma community. Cases of domestic violence occur in many of the families in Romania, where 1 in 4 women has been physically or sexually assaulted by a partner or ex-partner (Fundamental Rights Agency, 2014), and in 2019 there were more than 25,000 acts of hitting or other violence. Most of these perpetrators are men (91%) and 77% of the victims

¹ In this text the term “victim” refers to women who were assaulted by partners, or former male partners, taking into account that most cases of the domestic violence recorded by the police fall within this typology.

² Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.05.2011, also known as the Istanbul Convention, available at <https://rm.coe.int/168046253e>. The Istanbul Convention was ratified by Romania in 2016, and a good part of the provisions of the Convention were transposed by Law No. 174/2018 of July 13, 2018 on amending and supplementing Law No. 217/2003 for preventing and combating domestic violence

are women³. These are only a part of domestic violence acts reported to the police, but many other cases remain unreported, for reasons including low trust in the authorities, the widespread practice of blaming victims, victim's fear of the aggressors and escalating violence from their part in case of filing a complaint.

Because the predominant image of the victim – what in the specialised language is called the *perfect victim* – is that of a woman who is part of the majority, white, middle-class, who is in a heterosexual relationship, women who do not fit into this image on the basis of their identities face the reluctance of the authorities (Morrison, 2006), while myths and stereotypes about Roma, poor people, Muslim women, etc. hinder their access to services or justice – “This is how Roma people are, this is their culture”, “Roma women are passionate”, “The Muslim woman must follow the man”. In 2013, 1 in 5 Romanians considered as a characteristic of Roma that they are thieves/criminals (National Council for Combating Discrimination, 2013). These prejudices cause punishable behaviour, such as domestic violence, and when directed against *the perfect victim*, it must be sanctioned accordingly, and the perpetrators to be held accountable for their actions before the law. But in cases of domestic violence against minority women, such as Roma or Muslim women, the same violent behaviour is associated with their culture, and the authorities do not intervene in cases of abuse in minority communities. The individual or collective reluctance (at the level of the institution, authority) to intervene in such cases starts from the fear of not being labelled as culturally insensitive – what Gangoli and Chantler (2011) call ‘racial anxiety’; While it is at the same time a way of prioritizing culture over individual rights and considering this behaviour as acceptable if it occurs within a minority, it means applying double standards and violating the rights of victims of domestic violence.

One of the recommendations made in the Council of Europe's *Training Manual for Judges and Prosecutors on Women's Access to Justice* (2017) refers to the fact that judges and prosecutors must avoid myths and prejudices that justify domestic violence: “While judges are encouraged to understand the particular circumstances of minority women, including their cultural context, they must not excuse human rights violations based on culture”.

³ Data transmitted by the General Inspectorate of the Romanian Police as a result of a request made by the FILIA Center based on Law no. 544/2001 regarding the access to information of public interest, available here <https://violentaimpotrivafemalelor.ro/statistici-violentain-familie-2019/>

(Duban, 2017, p.97). One such example is that of early marriages, both in the Roma minority⁴ and in young non-Roma, who are part of traditionalist communities and families without financial means, in which girls are minors and their partners are adults. Although we are talking about a serious violation of the rights of the child, including sexual violence against minors, neither the community, nor the authorities (Braga, Neaga, Nica, 2017) sanction these acts of violence. Early marriages are a result of gender roles associated with girls and boys in traditionalist communities, sexism and racism – when they occur as a mechanism of protection against sexual exploitation and a result of economic vulnerability (Oprea, 2005). Early marriages are present in many cultures around the world, but the prejudices in the Romanian society and, implicitly, among the representatives of the authorities, reinforced by the exotic images from the mass media presenting early marriages in Roma traditional communities⁵ make these marriages take place with the complicity of the local community and of those who should intervene to respect the rights of the child.

An intersectional approach to domestic violence requires first an awareness of the forms of discrimination that female victims face in accessing services and justice, based on societal prejudices and stereotypes, and of how these forms of discrimination block their exit from a domestic violence relationship. This type of approach gives victims the opportunity to become survivors of violence. Secondly, an intersectional approach involves ensuring that all victims of domestic violence have access to services and justice, taking into account their identities and the obstacles they face. It refers to the adaptation of the whole process of getting out of a violent relationship, from the moment the victim notifies the authorities, accesses the psychological, social, legal counselling services, until she reaches a judge for obtaining a protection order, and it refers to the various realities experienced by women. The different social contexts in which women live, as well as cultural differences, determine the existence of specific obstacles, as highlighted, for

⁴ More information about early marriages in Roma communities is available in the study by Romani Criss and UNICEF, authors Nicoleta Bițu and Crina Morteau – *Are Children's Rights Negotiable? Early marriages in Roma communities in Romania*, available at <http://www.romanicriss.org/Mariajele%20timpurii%20in%20comunitatile%20de%20romi.pdf>

⁵ The Roma minority includes a whole diversity of subgroups – bear handlers, fiddlers, bricklayers, florists, blacksmiths, sedentary gypsies, etc. -, the traditionalist ones, such as copper smiths, cauldrons makers or gabors, where the cases of early marriages are more frequent, being only a part of them.

example, by Alexandra Oprea (2003) in the case of Roma women – their fear of police brutality, the strengthening of prejudices about the aggression of Roma men or the shame associated with the family. All of these make Roma women reluctant to report domestic violence. For women living in rural areas⁶ with poor economic status and a low level of education, a way out of a violent relationship is almost impossible if authorities do not develop and apply a mechanism to ensure *de facto* access to justice for all women. Obtaining a protection order requires to know the law and to prepare the file with the necessary documents and evidence, so it is essential to know how to read and write in Romanian, to be able to fill the documents or if you are a woman with a visual impairment to know where to ask for help to complete documents.

In the research paper, “Everybody knew! Violence against Roma and non-Roma women between “normal” and normative” I highlight that, in Romania, 3% of Romanian citizens did not graduate from school (out of which 1.36% are illiterate), but in the case of Roma people we are talking about a much higher percentage, 20% without education, out of which 14% are illiterate⁷, data indicating a higher number of Roma women who may encounter difficulties in obtaining a protection order. At the same time, the lack of nurseries and kindergartens, mainly in rural areas, “disproportionately affects women and, in this case, girls, who take over the care work in private space” (Braga, Neaga, Nica, 2017, p. 42). Childcare and household responsibilities pose an additional obstacle to women’s mobility. Going to the nearest forensic unit to obtain a forensic certificate requires that the victim be able to leave the children in someone’s care and to afford the travel costs and the cost of the certificate. In addition, in some forensic units the certificate is not issued on the same day. A low level of education or lack of knowledge of the Romanian language in the case of immigrant women hinders access to justice as in order

⁶ 64% of Roma live in rural areas, compared to 46% of Romanians – The analysed data are from Table 18. Stable population aged 10 and over by sex, ethnicity and level of education – localities categories, *Census of Population and Housing 2011*, available at <http://www.recensamantromania.ro/rezultate-2/>

The data was presented in the volume “Everyone knew!: Violence against Roma and non-Roma women between “normal” and normative” (2017).

⁷ Inequalities in the level of education are the result of historical inequalities and structural discrimination against Roma, but the level of education among the Roma minority increased at an accelerated rate in the period 1998-2012. The families’ lack of income to ensure investment in children’s education is one of the main reasons for dropping out of school (Duminićă, Ivasiuc, 2013).

to receive a protection order it is required to submit a four-page form, which also includes specialised language on how to obtain free legal aid.

The normalisation of domestic violence as an issue that should remain within the family and blaming the victims (“She must have done something, she was not beaten in vain”, “There is no smoke without fire”, “The woman must be beaten, she knows why”) make the acts of domestic violence be denounced very late, only when it takes extreme forms, and the victim fears for herself and for the lives of the children. In these situations, the police may arrive at the scene and issue an interim protection order, based on the risk assessment form, but the victim can be asked questions that may be difficult to understand, while she is facing a crisis situation and has to deal with the specialised language of the risk assessment form (ecchymosis, lesions, abrasions, vandalism).⁸ Lack of access to legal, social and psychological counselling services, especially in rural areas, where the social worker is burdened with responsibilities and may not even know the legal provisions to be able to provide the victims of domestic violence with the needed support, limits the ability of women to act in order to be safe, and they do not even have the possibility to be recognised as victims of violence. In this way, domestic violence remains a hidden problem and does not officially exist in the statistics.

All these aspects reveal a difficult path that some of the victims of domestic violence have to follow in order to try to get out of an abusive relationship, but in the absence of any measures of the authorities to provide the necessary support adapted to the different life contexts of these women, domestic violence will continue to remain a problem tolerated by the community and the authorities.

An intersectional approach to domestic violence involves ensuring that women belonging to different vulnerable social groups are at the heart of our actions and have real access to services and justice. The responsibility for having a society free of domestic violence lies with those who have the public confidence to develop and implement rules that should protect us all from the aggressors; there is no rational justification for a police officer, a prosecutor or a judge to believe that some women deserve violence based on identity differences.

⁸ The risk evaluation form can be accessed at: <https://lege5.ro/Gratuit/gmytimzvgq3a/ordinul-nr-146-2578-2018-privind-modalitatea-de-gestionare-a-cazurilorde-violentadomestica-de-catre-politisti?pid=276469452#p-276469452>

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THE IMPORTANCE OF CULTURAL, SOCIAL AND RELIGIOUS DIFFERENCES IN DOMESTIC VIOLENCE CASES INVOLVING ASYLUM SEEKERS AND REFUGEES

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Sexual and gender-based violence, including domestic violence, are widespread phenomena among asylum-seeking and refugee communities in Romania. Sexual and gender-based violence is defined by humanitarian workers in a broad sense as “targeted violence against a person because of his or her sex or gender, or violence that disproportionately affects a particular gender”¹. Women and girls are generally the most exposed to gender-based violence, but this does not mean that men and boys cannot also become victims of this treatment.

If we talk specifically about domestic violence, it is one of the most common – and underreported – forms of gender-based violence encountered in the communities of migrants, asylum seekers and refugees.

In the case of persons seeking or in need of international protection – asylum seekers and refugees – gender-based violence can occur in specific stages and forms, as follows:

– **before leaving the country of origin.** For example, there are forms of violence such as rape as a weapon of war; sexual assault/exploitation committed by combatants; early/forced marriage, female genital mutilation, domestic violence, honour killings etc.

– **during forced travel on the way to the country of asylum.** For example, rape, sexual exploitation, human trafficking.

– **in the country of asylum** – where violence can still take the same forms ranging from sexual exploitation or rape to domestic violence.

¹ A definition that is in accordance with Article 1 and of the UN General Council Declaration regarding Elimination of Violence against Women (1993) and with Recommendation No. 19 para (6) of the 11th Session of the Committee for the Elimination of all forms of Discrimination against Women

Another important aspect when discussing asylum seekers and refugees is the legal regime they have on the territory Romania.

According to Law No. 122/2006, an asylum seeker is the “foreign citizen or stateless person who have expressed their will to obtain international protection in Romania, as long as the asylum procedure regarding their application has not been concluded”². In other words, a person who is on Romanian territory legally or illegally, or who arrives at the border, can submit an application for international protection (also called “asylum application”), claiming that his or her country of origin cannot or does not want to offer protection, respectively safety and respect for human rights.

The asylum procedure is carried out in Romania by the General Inspectorate for Immigration – GII (in the administrative phase), or by the competent courts (court or tribunal for appeal). During the asylum procedure, applicants are accommodated in one of the six Regional Centres administered by the GII or may live outside these Centres.

The beneficiaries of international protection are “foreign nationals or stateless persons who have been granted refugee status or subsidiary protection”, under the Law.³

The difference between refugees and those receiving subsidiary protection is detailed in the *acquis communautaire* in the field of asylum, as well as in national law. This difference is mainly due to the reasons why people leave their country of origin: while refugees leave because of persecution on the grounds of political opinion, race, religion, nationality or belonging to a certain social group, beneficiaries of subsidiary protection are those who, in the event of their return to their country of origin, would risk being subjected to the death penalty, torture, inhuman and degrading treatment or other risks posed by widespread violence or conflict.

Last but not least, forced displacement is the element that differentiates the beneficiaries of international protection from migrants who voluntarily leave their country of origin – for business, study, work reasons etc.

Precisely because of their special situation, asylum seekers and beneficiaries of international protection in Romania may face specific challenges when it comes to family relationships.

² Law no. 122/2006 on asylum in Romania, with subsequent amendments Article 2 para. (1) lit. b)

³ Law no. 122/2006 on asylum in Romania, with subsequent amendments Article 2 para. (1) lit. a²)

For instance:

➤ **Lack of documents**

In the case of asylum seekers and, subsequently, of persons who are granted some form of protection, an important issue that is often reported by authorities, courts or service providers is the lack of documents: ID, civil status, certificates of studies, etc.

In some cases, such documents may never have existed, as they are not normally issued in the country/area of origin of the respective person. In some countries, for example, birth certificates are not routinely issued to people or ethnic groups. In other cases, the documents issued are not in conformity with the official ones issued in the European Union, for example, the “marriage certificate” can be issued by a religious leader (Imam), for proxy weddings (marriages *in absentia*) concluded through parents. In other cases, such documents either remain in the country of origin, are destroyed during conflicts, or are lost along the way.

Generally, it should be considered that **asylum seekers and refugees, once in Romania, should not contact the authorities of their country of origin.** In this regard, given the significance of the request for protection, a refugee should not contact the authorities – **including the embassy/consulate of the country of origin, otherwise, he/she could risk the re-evaluation of his/her situation and even the withdrawal of the protection granted in Romania.**

Therefore, at the time of submitting the asylum request, the applicant hands over the national passport⁴, and temporary identity documents are being issued (in the case of asylum seekers) and, subsequently, temporary residential permits (with a Personal Numeric Code)⁵ or, upon request, a travel document replacing the national passport.

Regarding family relations, some persons may submit copies of the original documents to the Romanian authorities, while others may not even be in their possession. The checks carried out by the Romanian authorities during the asylum procedure aim, among other things, at clarifying aspects of identity and family relationships. Therefore, the documents issued by the Romanian state are often the only documents of a refugee family. In

⁴ Law no. 122/2006 on asylum in Romania, with subsequent amendments and completions, Article 19 lit. d).

⁵ Law no. 122/2006 on asylum in Romania, with subsequent amendments and completions Article 17 (11) and Article 20 lit. a).

this regard, the provisions of Government Ordinance No. 44/2004⁶ are also relevant. According to those, in order to ensure access to rights, authorities shall take into account the specific situation of foreigners who have acquired international protection in Romania.

➤ **Lack of trust in the authorities**

Asylum seekers and refugees (except for refugees sur place) are usually forced by circumstances to leave their countries of origin. Often for certain groups – ethnic, religious, sexual minorities and so on – the authorities of the countries of origin, such as the police, the religious courts, other representatives of state institutions have been agents of persecution, torture and ill-treatment in the country of origin. In other cases, trust in the authorities may deteriorate during forced travel, on the grounds of abuse committed or permitted by state authorities. All these situations can significantly erode refugees' and asylum seekers' trust in the authorities. In order to rebuild this trust, it takes time and clear, accessible explanations regarding the practices and policies of the Romanian authorities.

➤ **Difficulties in reporting situations of abuse caused by communication barriers**

On the one hand, in the case of some refugees, the level of Romanian language proficiency can substantially vary, depending on the period spent in Romania and the level of interaction with the society of the host country. For example, persons who have spent most of their time at home or with their own community (a phenomenon often encountered in practice with regard to women and girls, especially belonging to conservative groups) may have an extremely low level of knowledge of the language of the host country. At the same time, the level of understanding of some procedures may be low, especially if these are radically different from those in the country of origin.

The need to communicate through interpreters often occurs, but it is important for them to be properly trained, to understand, for example, the confidentiality of procedures, or the delicate nature of issues and processes.

➤ **Other cultural, religious differences etc.**

There are many issues that can be discussed in detail in this section, but it is important to note that the vast majority of asylum seekers and refugees

⁶ Government Ordinance No. 44/2004, Article 14; Government Decision No. 1,483 of September 9, 2004, Article 2.

come from countries of origin and cultures that are very different from ours. For example, in the case of a refugee family, one cannot neglect the role that the community (national, ethnic, linguistic, religious) can play in addressing issues such as domestic violence, divorce or child custody.

At the same time, the portrayal of the status of women and children in the societies/communities of origin, the image that religious leaders or certain currents of those religions attribute to women and families, social norms or the incidence of harmful traditional practices affecting women and girls (honour killings, female genital mutilation, forced or early marriages, etc.) are elements that play an important role in the personal and family life of asylum seekers and refugees, but also in their ability to respond to certain treatments, or to understand the legal systems of the host countries. Often, by allocating time and effective assistance, but also by adapting specific procedures to their situation – for example, by providing appropriate and trained interpreters or by excluding them from the obligation to submit certain documents – these barriers can be removed.

Finally, openness to understand these specific challenges and to integrate appropriate responses into support and assistance services, into measures taken by the authorities or the judiciary remains essential for any professional.

ARGUMENT FOR THE RIGHTS OF MUSLIM WOMEN IMMIGRANTS AND/OR REFUGEES

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Motto:

“They put a muzzle on our mouths and covered our faces. Our hands were free. They needed someone to wash them, feed them and raise their babies. They didn't tie our hands either. They needed us to work for them.”– Shirin Ebadi¹, former judge in Iran before the 1979 Islamic Revolution, Nobel Prize for Peace winner in 2003.

In the context of globalization, free movement, but especially of international, national, ethnic, religious conflicts, a growing number of immigrants and refugees are settling in Romania. The topic of **Muslim women** has been and still is a strongly debated issue, especially after the events of 9/11, at the intersection of several topics with both a political stake and one related to perspectives on human rights concepts. Within the Muslim diaspora in the secular context of Western European countries, the discussion of the problematic image of Muslim women, seen as a contradiction between gender equality and women's empowerment, has been dominating public discourse for almost four decades. The media portrayal of Islam (seen as a monolith)² as a threat to Western values was and remains gender-focused

¹ Shirin Ebadi became the first woman judge in her country, then secretary in the court she presided over, after religious authorities said women cannot be judges. He managed to become a human rights lawyer, defending women and children in political trials in which most lawyers were afraid to plead. She was arrested and threatened with death, but she continued to defend the victims of injustice and discrimination with great courage, becoming a strong, world-renowned voice.

² Many Muslim scholars, human rights activists, political scientists draw attention to the simplification and reductionism, sometimes ignorant, sometimes simply careless, in the references of institutions, scientists, intellectuals but also of Western jurists to Islam as a single entity. Islam is the third biggest monotheistic religion (in chronological order), but

using stereotypical and specific Middle Eastern images of Muslim women to demonstrate the incompatibility of the Islam with human rights and modern Western values.

What we have been arguing from the beginning is that beyond religious affiliation and identity, Muslim women belong in the first place to all humanity. In other words, no matter whom one believes in or what culture one is from, the right to dignity, respect and life, as we will see below, is sacrosanct.

Throughout the world, there has been discriminatory legislation over time that has prevented women from accessing human rights. Many research studies have proven the implications of these discriminatory practices and how almost every aspect of women's life can be affected by the lack of respect for human rights. Even though these issues have been resolved, at least at the legislative level in Western states, many women in this world cannot yet dream of the freedom to choose a partner, to inherit a property, to refuse a marriage, to oppose traditions that subject their own body to physical torture (clitoridectomy), to choose their sexual orientation, to dispose of their own body (Islamic veil practice, hijab), to obtain custody of children, to choose a profession, to manifest freely in school, or to oppose punishments against which they have no right to rebut, honour killings.

A very important detail: even if we invoke many aspects related to the Muslim religion or culture of Muslims, according to anthropological, cultural, sociological research, we are not in a position to, and should not make a hierarchy or classification of cultures/religions as being good or bad. In our opinion, adopting or stigmatising a culture/religion according to its own system of values would only make it even more difficult to make a decision about a person's life.

This argument for the rights of Muslim women is intended to be, in fact, **a plea for a more nuanced and in-depth understanding of the situation of these women.** First of all, we want to get out of the Manichaeian framework in which these women either leave the community they are part of, or assume

its manifestations differ from country to country, from one continent to another, being characterised by a lot of customs and traditions often confused with religious dogma. Within Islam, there are several schools of jurisprudence and a variety of trends, sometimes twinned with political ideologies that create confusion over human rights assessments - the most problematic area being women's rights. We can say that there is an Islam as religion, but its mundane manifestation, which translates to Muslims around the world, is related to plurality. The most substantial part that causes strong intellectual headaches to human rights researchers is linked to „family law“.

their punishments, economic, social repercussions, etc., which often means acceptance and silence in the face of inhuman practices.

Muslim women who can address courts in Romania come from different social, intellectual backgrounds or have different orientations and affiliations, in the sense that they can be conservative, liberal or progressive. It does not mean that, being Muslim, they have an identical narrative in terms of life experience. The lifestyle of a woman in Afghanistan is very different from that of a woman in Iran, Lebanon or Jordan. Islam in Pakistan is not the same as Islam in Iran or Iraq. They may or may not be practicing religion. Most of the time, wearing a hijab does not mean that a woman belongs to a radical trend. It can mean that she is forced or constrained to wear it. The right of women to dispose of their own bodies is a greatly debated topic in Muslim circles. At other times, the hijab may mean coquettishness or simply a declared cultural symbol, when these are longing for their countries and their families.

Many of these women have a huge potential to challenge patriarchal norms, to denounce oppression, but this manifestation must start from within, to give them time to strengthen their demands within their communities. The strongest support we can provide is protection, tools accessible to them to know the laws of the host country and instilling a sense of security.

The chance for change towards emancipation and human dignity belongs to an invisible thread of solidarity and a nuanced, deep, specific understanding of the situation in which they find themselves.

When we talk about domestic violence, divorce, or family law issues, there are a few things to keep in mind: most Muslim countries have civil codes borrowed from Western countries, but issues related to the status of Muslim women in some states correspond to medieval practices. Issues related to divorce, child custody, physical, verbal, psychological violence are rather resolved in informal “religious” tribunals – *sharia* – which at no time question the status of women in terms of rights, but rather in terms of obligations and obedience. When hearing Muslim women, one can “find” that they agree with the physical violence, that they do not want to leave abusive relationships, etc., but most of the times, they have never heard in their lives of the prospect of rights or that a law, an authority, can ever defend them. Their opposition is often punished by stigmatization in the community, exile, physical punishment, or even death penalty. The concept of “honour” is a fundamental concept characteristic of tribal societies. Many Muslim states have not resorted to the evolution of some institutions and rather use a combination of practices and cultural customs of the clans (not in a pejorative

way, but as an organization of a society) and various interpretations of the Qur'an.³

When addressing the courts, most of the time these women start from the premise that no one is defending them, that even if the civil court shall give them justice, the usual punishments shall be applied, within the community, or they shall face conclusive social exclusion. In the context of financial difficulties, their decisions may be even more difficult. When it comes to men, their ignoring of civil authorities is well known in the communities and, even more, their difficulty to understand that on the European, Western territory, laws related to aspects of secularism prevail.

The most serious threat to Muslim women when they divorce, for example (to be noted that in Muslim societies women do not initiate divorce, these are exceptions, and in case of any kind of violence this is kept as hidden as possible, being considered a shame of the family), is the resort to the presumption that they must have found someone else and then the honour killing is justified. This concept should not be confused with the so-called “passionate” crimes, often known in Western societies.

Honour killing is an act of extreme violence against a woman, when it is believed that a code of honour has been “broken” and shame is brought on the family.⁴ Women can also be at risk of shame, accused of denigrating men's honour, and can be killed because they became pregnant as victims of incest and rape. Being suspected of sexual depravity, such as pregnancy out of wedlock or adulterous behaviour, is considered sufficient to justify punishing a woman. What marks the so-called **honour killings** is that not only the husband or partner can perform the act of killing, but sometimes the community and other family members, such as mothers, siblings, uncles and cousins, or their own sons may be the perpetrators of the crime. Casuistry shows that such “revenge” can take place decades after the indictment. In

³ Over the last decade, numerous studies on the hermeneutics of Islamic sacred texts – especially the Qur'an, have revealed that in most cases, certain practices, such as **sole custody of the father, the right to life and death over one's wife, apostasy (in the case of atheists or LGBTQ+ minorities), stoning adulterous women, whipping, honour killings, clitoridectomy, are the result of abusive male interpretations** of the Qur'an and not explicit indications of punishment. In other words, in Islamic societies the customs and interpretations of radical, fundamentalist figures in collaboration with different factions and political orientations prevail over the Qur'anic principles.

⁴ It can also mean the refusal of an arranged marriage, the expression of one's own choice or, in some cases, the simple physical touch of a foreign man, from outside the family or engaging in a dialogue with him.

cases of Muslim women, marriages to men of another religion, other ethnicity, etc. is seen as a disgrace to the whole of Muslim society, killing the woman again being justified as it is considered that thus the honour of the community is restored and, moreover, that the act of honour killing is a duty.

We emphasise once again the need to analyse from a global perspective the domestic violence against Muslim women and honour killings, physical, economic, psychological violence, etc. as part of a larger global phenomenon, concepts such as patriarchy or systemic discrimination better explaining their causes in the specialised literature.

It is important to note that the issue of femicide is not about a culture, a group, or a religious community. Women are beaten or killed all over the world for similar reasons. Domestic violence intersects with a person's class, religion, race, or age, and patriarchal structures intensely use violence to subjugate women.

On the other hand, there is a trap in the judicial practice, for example in Europe, on the rights of Muslim women, namely the issue of multiculturalism. The most sinuous issue is that of non-liberal multiculturalism. Typical examples are the communities in which men have complete control over women's lives, the Muslim communities (and not only) being characterised by a certain degree of radicalism. Recognition of Islamic courts is the most well-known request of non-liberal multiculturalism type from immigrant or refugee groups (it works, for example, in the UK). Widespread and susceptible to public opinion is the non-liberal multicultural policy of the cultural clause. This institutional practice, whether legislated or not, justifies and reduces the seriousness of criminal acts by invoking the culture of origin of the culprit, where these acts are acceptable or even considered norms of conduct. Here, we can remind a case from specialised literature where a Lebanese man strangled his daughter after beating her with a club, because she did not agree to marry the man he chose. The judge in Germany, the man's country of residence, invoked the cultural origin right attenuating element. In a different case, also from Germany, a 26-year-old Moroccan immigrant with two children was brutally beaten by her husband because he caught her talking in the park with a stranger. The woman filed for divorce, however Judge Christa Datz Winter refused to grant her urgent proceedings, as what happened to her could not be considered very dangerous, "given the cultural status". As a Muslim, she should have expected such behaviour. The judge quoted the Qur'an to her, according to which men have the right to impose corporal punishment on their wives.

Why would it be acceptable for a woman from another culture who has reached the West to be less protected?

Discussions on the status of Muslim women, dilemmas, criticism, etc. have been the subject of many years of research, and also part of casuistry. Most of the time, until a consensus of understanding, applicability, and research on each case is reached; we witness serious violations of the right to freedom of thought and conscience, the freedom of autonomous decisions, the right to life of these women. They do not need us to blame their religion, or judge them for the history of their community, nor should we ask them about their own choices – which should often be viewed with suspicion.

Each of us should be aware that often a foreign country, a foreign language, a foreign culture can mean a rebirth in freedom for these women. That, perhaps, a Romanian court is their last chance at life. That, perhaps, Romania is the country with the most people living abroad, but it is also the country offering hope for many people, and especially for many women, sometimes the hope of a dignified life. We recommend that they be listened to, given the opportunity to speak, at least to tell their own experiences, because *the voice of Muslim women is the most unknown, unheard voice among all the voices of the world.*

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THE DOMESTIC AGGRESSOR – A RESPONSIBILITY OF THE WHOLE SOCIETY

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Domestic violence is a phenomenon present in all cultures of the world. It can occur in the life of a couple, it can be exercised on other family members, be they minor or adult children, parents, or extended family members. It characterises a model of authority that is based on control, on the asserted and maintained superiority of one of the members of the couple or family and on the disregard for the others, on the inequality created by this attitude. The tools for maintaining control through authority are denigration of others, threats, blackmail, verbal and physical violence, including sexual violence, restricting the freedom of choice and movement of family members considered weak and incompetent.

Both men and women, both young and old can exercise such a model of violence. In the available statistics, the percentage of male aggressors is dominant¹. We can identify two important criteria that determine diametrically opposed approaches of this phenomenon, at the individual and societal level. The first criterion is tolerance/intolerance of interpersonal violence. The second criterion is that of equality between men and women. A society which, at a certain historical moment, states and maintains that it does not admit any form of violence between its members and that they have equal rights, will consider domestic violence a crime and will take the necessary measures to prevent and combat the phenomenon.

The most important international legal instrument for preventing and combating domestic violence is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,

¹ M. Săsărman, B. Voicu, *Studiu exploratoriu cu privire la implementarea ordinului de protecție și a prevederilor referitoare la violența în familie din Codul penal al României în perioada 2012-2016*, Asociația Transcena, București, 2017, pp. 11-33. (Exploratory study on the implementation of the protection order and the provisions regarding domestic violence in the Criminal Code of Romania during 2012-2016, Transcena Association, Bucharest 2017 pp 11-33)

adopted in Istanbul on 11 May 2011. In Article 3 the Convention defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”² From 9 July 2020, the definition in the Romanian legislation contains, in addition, the recital of forms of violence, among which cyber violence: “any inaction or intentional action of physical, sexual, psychological, economic, social, spiritual or cybernetic violence, which occurs in the family or domestic environment or between spouses or ex-spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim.”³ Both the Convention and the legislation of Romania emphasise the protection of victims. Measures to punish aggressors are an extremely controversial topic. In most cases of inaction or of blaming the victims, some experts blame the mentality, which is not adapted to progress.

There is, in the recent history of Romania, a precedent for changing a mentality through legislation. The Convention on the Rights of the Child⁴ prohibits all forms of violence and abuse against minors. As a result, methods of education can no longer include force or the threat of force, regardless of the form in which it is exercised. Social services responsible for child protection intervene in all cases with the intention of protecting the child from parental abuse, and parents received the message that there are rules regarding violence against children that they cannot violate. Even though the process of change is long and difficult, it has begun.

From the experience of private service specialists, the mentality towards violence against women has not changed and the resistance is extreme. The opposition can be seen primarily in the level of accountability, of sanctioning domestic aggressors. In Romania, one of the most striking figures in the statistics describing domestic violence is the percentage of convicted aggressors⁵. The small number of convictions can be interpreted from several perspectives, but this has only one important consequence: the weak capacity of the law

² Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, Treaty Series – No. 210.

³ Law No. 106/2020, entered into force as of 9 July 2020

⁴ Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990

⁵ M. Săsărman, B. Voicu, *op. cit.*, p. 61.

to reduce the phenomenon. This makes the balance between mentality and legislation to be tilted in favour of the mentality, which currently leads the implementation of legal provisions.

Sanctioning domestic violence against adults is a matter of rights and freedoms. In a society based on liberal principles, there must be strong and unanimously accepted reasons for the state to intervene in the private life of the citizen. Which part of the private life of society members can be considered completely inaccessible to justice?

How can the state take responsibility for protecting victims without properly punishing the perpetrators? The Romanian society is, at this moment, in the stage of clarifying the answers. The consequence of social indecision is the high number of victims of physical violence, domestic sexual assault and murder.

Preventing and combating of the phenomenon is done through protection measures granted to victims through residential, counselling and support services, but also in the form of civil protection orders issued against aggressors, through measures to punish the aggressors and education. Although the legislation on victim protection has improved, the effect of these changes does not reach the expected level because the victim remains the one responsible for the initiative of sanctioning the aggressor.

In 2019, 36.879 criminal acts were registered at the national level, referred as crimes provided by Law no. 17/2003⁶. Among the reported acts, 79 were murders and 54 were attempted murders. In December 2019, 59 people had received final convictions for domestic violence. The percentage of convictions is extremely low. We know that in more than half of the cases, the victims withdraw their complaints and, as a result, the perpetrators remain unpunished. In 2017, 2018 and 2019, the National Agency for Equal Opportunities registered over 13.000 victims benefiting from services provided by public and private providers at the national level. These figures send a clear message that domestic violence perpetrators can easily escape conviction.

Adult education, as an approach to prevent and combat the phenomenon of domestic violence is done either alternatively with custodial sentences, or as part of the custodial sentence. In Romania, the National Administration of

⁶ These are figures communicated by the General Inspectorate of Romanian Police to FILIA Association through communication No, 386.672 of 4. 02. 2020 – the document was put at the disposal of the National Network of combating violence against women (VIF)

Penitentiaries has a specialised program, but the participation of convicted aggressors is not mandatory, being only recommended. The perpetrators must follow a program only when they are free, either as part of the suspended sentence under supervision, or as part of the issued protection order. The system of services available to the aggressors in these situations is under construction. The international literature in the field recommends, based on meta-analyses, standardised and structured, group programs, based on theories with applicability and verifiable results, which are delivered by specialists with specialised training in the topic and methodology used⁷. In the absence of standardization, it becomes difficult for the national judiciary to accept the validity of the programs offered, in order to frequently include them in the pronounced sentences.

The domestic aggressor is a particular type of aggressor. In cases of “traditional” crimes, described by criminal law, the definitions of the facts are broad and have been developed over long periods of practice. Domestic violence has been investigated as a crime, along with other criminal acts, for nearly 40 years only⁸ (victim services appeared in the ’70s, those for perpetrators began to be structured enough to be evaluated only in the ’80s). In Romania, domestic violence provided by law as domestic violence is, since 2014, only an aggravating circumstance and we will see how the judicial decisions are formulated so that the committed crimes be undoubtedly considered as acts of domestic violence.

There is an important difference between the perspective of the programs and that of justice: justice in Romania sanctions a perpetrator for one, two or three crimes. The adult education program must take into account the continuing nature of domestic violence and all forms of aggression; otherwise, it will lose its effectiveness. Most aggressors refuse to work on something more than what it was indicated by the judge in the decision. In this respect, we can say that justice has not yet adapted to the reality of the phenomenon, at least not in our country.

⁷ A description of the principles, values and structure of a successful program for domestic aggressors can be found on the European Network for Work with the Perpetrators website : <https://www.work-with-perpetrators.eu/resources/guidelines> accessed on 08. 07.2020

⁸ D. Adams, Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovation and Challenges, *Clinics in Family Practice*, Vol. 5 (1), May 2003.

Control and domestic violence have not only one source. The ecological model first theorised by Urie Bronfenbrenner⁹ explains the multitude of factors that contribute to the development and consolidation of this behaviour. In a representation of concentric “spheres of influence”, the individual and the body characteristics are placed at the centre, interact, and respond to stimuli that come from the relationship with parents, family and the explicit and implicit education acquired in these environments, from the neighbourhood, from the community and from society.

Each individual selects by experimentation the various models to which they have been exposed or which they have received. If a society is tolerant of the model of abusive authority in the family, many individuals will opt for this model because it ensures their success. They find that by violence the results are much faster than by communication, debate and negotiation. As long as society does not have moral norms that reject domestic violence, the option for the shorter path becomes natural. Ellen Pence and Shamita Das Dasgupta explain in *Re-Examining ‘Battering’: Are All Acts of Violence against Intimate Partners the Same?*¹⁰ the variety of possible profiles of the domestic aggressor. The authors harmonise different points of view on the causes of the phenomenon and the typology of domestic aggressors. They identify five types of domestic violence: domestic aggression, reactive violence, situational violence, pathological violence and antisocial violence. Each type of violence listed is accompanied by a picture of the aggressor type, more precisely of the characteristic behaviours.

The first category, *domestic aggression*, is one that we can integrate into the original picture constructed by activists in the 1970s in the United States, violence based on control, coercion and intimidation, through the constant exercise of power. Four historically maintained and strengthened beliefs support this behaviour:

1. Belief in natural superiority and hierarchy.
2. Lack of consequences after using violence (men are often physically stronger than women, they are not afraid of the victim’s physical reaction).
3. Social conditioning (in the form of dependence of those at the base of the social pyramid on those at the top of the pyramid).
4. Historical and social objectification and marginalization

⁹ U. Bronfenbrenner, *The Ecology of Human Development*, Cambridge MA, Harvard University Press, 1979

¹⁰ E. Pence, S. Das Dasgupta, *Re-Examining ‘Battering’: Are All Acts of Violence Against Intimate Partners the Same?*, Praxis International, Inc., June 20, 2006.

The second category, *reactive violence*, appears as a reactive behaviour that tends to balance the scales of power and ensure the survival of the partner who is initially victimised.

The third category, *situational violence*, is found only in relationships undergoing crisis situations, when other means of achieving a goal or an expectation towards the partner do not work and the situation is tense. In the interpretations of the specialists and of the professionals involved, situational violence occurrence is most often identified instead of domestic violence. The most important criterion for differentiation is the victim's lack of fear towards the aggressor, that persistent fear generated by the oppressor in her mind.

The last two categories, although important, are less relevant here. These cannot be treated as specific forms of domestic violence, but only as types of domestic violence. The authors point out that the types of violence are intertwined in individual cases. As a result, a general working principle should start from the idea that each case is unique. Therefore, programs must be recommended following an individual evaluation, not only on the basis of the court decision, but also in adjunction.

In conclusion, the set of measures for the accountability of aggressors in the social, legislative and educational fields was built in two directions: sanctions and behavioural change. In Romania, there are still not enough services and programs to provide adequate support for changing the behaviour of aggressors. As a result, the role of fair sanctioning according to law and the public pressure are central to preventing and combating domestic violence. For the time being, public attention is focused on the responsibility of the victim, which makes social pressure for change, in the sense of intolerance for domestic violence, to remain, unfortunately, reduced.

#ȘiEuReușesc* – PEER SUPPORT IN DOMESTIC VIOLENCE

Camelia Proca

A.L.E.G.

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Building support communities for women who have experienced domestic violence is an initiative in which A.L.E.G. has been actively involved since 2017, ever since the #ȘiEuReușesc programme. The Centre of Counselling for Preventing and Combating Domestic Violence A.L.E.G. has over 15 years of experience, and during this time, the organisation had the opportunity to meet many impressive women who rebuilt their lives after abusive relationships through their courage and strength. However, in the public space such examples were very little known, the media mostly covering dramatic cases with unhappy endings, which are of course important because they show the necessary changes in intervention and legislation. But for women undergoing violence to see in the media such overwhelming examples of women being killed is extremely discouraging. They generally feel powerless, and they lack trust, isolated in their suffering. Moreover, the emphasis on extreme cases changes the perception of what qualifies as violence, both the women's perception and that of other relevant actors. This is why they often react too late, and their violence complaints are taken seriously only when it becomes extreme. Society thus misses the chance to prevent serious injuries or loss of lives.

In the first phase, we set out to give a voice to success stories, in order to encourage those women who are currently facing situations of abuse and feel disoriented and desperate, so that they can resonate and identify with other women who have managed to break free from the circle of violence and are trying to make a difference in their lives before reaching the worst forms of violence. Before it's too late.

The model that inspired us was that of the Ana Bella Foundation from Spain, which we met with the help of Ashoka Romania. Ana Bella is a woman with four children, who came out of her long-term abusive relationship on her

* In English "I can succeed too"

own and then managed to help thousands of other women, through the Amica Network, a form of peer support for communities. Based on her example, A.L.E.G. has developed a program based on the realities of Romania and the experiences of the women we work with. We chose to call the program #ȘiEuReușesc, thinking about that key moment when a woman's confidence that she can change her life is starting to grow since the moment she can say "I can succeed too", a victim of violence takes a first step towards becoming a winner herself, and for that she needs outside support and the examples of other women who have succeeded. Once she is safe and strong enough, she can choose on her turn, to help other women. Thus, women who have experienced violence receive support not only in times of crisis, but also in the long term and this helps them not to give in to the urge to return to an abusive relationship. They encounter solidarity in a community to which they also feel they also belong to, and which understands them, and this lacks acutely in our society.

What are these communities of survivors?

In our opinion, survivors of violence are those who have faced domestic violence in the past, who are no longer in a dangerous situation and want to share their story with an emphasis on how they have succeeded in helping other women. We use this term because it helps us change the paradigm existing at societal level: not to perceive women who face violence only as vulnerable and weak, but as women who also have an extraordinary resistance, a force that, if they succeed in using it not for remaining patient, but for getting free from violence and later to help other women, can be truly invincible. A survivor of violence is any woman who finds the inner strength to overcome her fears and improve her life. The communities of survivors of violence refer to a type of support in domestic violence that emphasises peer support. Women who have overcome violence are put in touch with women who still need help to get rid of violence, under the guidance of professionals in psychology, social work and the legal field.

It is important to note that this type of support does not replace specialised services (emergency reception centres, shelter, counselling, etc.), but it complements and increases their effectiveness: victims learn from other women how a psychologist, a lawyer can help them, they receive the necessary information and gain confidence to file a complaint, or obtain a protection order and – very importantly – they learn how to stand up to the aggressor whenever he returns with threats or promises. Breaking up with a violent

relationship is a long and difficult process, and relapse is common. Support networks increase victims' chances at a life without long-term violence.

Overcoming violence is similar to overcoming the force of gravity when one tries to detach oneself from the ground: it takes a lot of energy, which a single person does not have. Without a support network around, any person collapses when pulled down. In domestic violence, the aggressor systematically destroys the victim's ties with other close people, from whom he wants to hide the abuse. Domestic violence means repeated abuse over time, in many forms: physical, sexual, psychological, economic, and social. A vicious circle that deepens the feeling of helplessness, followed by shame and guilt. An exhausting experience. That is why outside help is needed, as well as new sources of power, and the connection with other women who have overcome violence in order to rebuild the victim's self-confidence. Moreover, since we are talking about very delicate and intimate situations, it is easier to ask for and receive the advice of another woman who has also gone through situations of abuse, than to address an institution. In fact, the 2014 FRA study also showed that a small percentage of victims of violence generally access public assistance services¹.

So far, we have identified three roles in the #ȘiEuReușesc programme through which survivors can get involved in helping other women: as public speaking ambassadors, as a resource person in a support group, or as an older sister providing practical help. Each role requires a minimum of training, which we offer through personal development workshops. Ambassadors practice how to speak in public without falling into the traps of journalists in search of sensationalism, they prepare for interactions with specialists to whom they talk about what needs to be improved in the intervention. The resource person learns about active listening and the importance of confidentiality in a support group. The older sister learns how to accompany a victim in various steps, without putting herself in danger. All the victors of violence learn how to help without imposing their solutions on other women. Many women who have gone through violence have not been treated for trauma, therefore, feelings of guilt and anger still burden and affect them. Personal development workshops under the #ȘiEuReușesc program helps them reconcile with the past.

A community of #ȘiEuReușesc survivors is a group of people in a locality that includes domestic violence survivors who are willing to:

¹ Available at: <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

1. make public their stories about how they succeeded, through video, audio or written testimonials (and everyone may choose whether to reveal their identity) on the website www.sieureusesc.ro;

2. be active in a communication group dedicated to overcoming domestic violence; and

3. participate in a psycho-educational support group for victims of violence, together with at least one specialist trained in the field. Such #ȘiEuReușesc communities currently exist in the cities of Brașov, Bucharest, Satu Mare, and Sibiu. Women who face violence and turn to a community of survivors of violence therefore receive double guidance: from trained survivors, and also from experienced professionals.

Communities can be coordinated by a highly available person (domestic violence survivor or specialist) or by an organisation. Regardless of the form of organisation, adherence to a few basic principles is paramount:

- There is no excuse for domestic violence. No one deserves violence.
- Domestic violence is based on an unequal power ratio between women and men, and it is a phenomenon that mainly affects women. Children who witness violence are also affected.

- Persons who overcome situations of domestic violence have a valuable experience that they can choose to share in order to help other women who go through situations of abuse.

- Each domestic violence survivor decides how and to what extent they are willing to involve themselves, depending on the personal situation. We encourage them to always put their own safety in the first place.

- We offer help without imposing our own solutions and we understand that each one's life story is unique. We also know that every woman has her needs and her own pace at which she makes decisions.

The Bucharest community of domestic violence survivors is a project of A.L.E.G. in partnership with ANAIS Association

FACES OF VIOLENCE

Andreea Olteanu, PhD

Clinician psychologist, Psychotherapist
Trainer at the SPER Institute

Alexandra, a beautiful and smart woman, is in front of me. She is a lawyer and works for a prestigious firm. She is the kind of person who gives you the impression that she is not missing anything. After a year of counselling and inconsistent complaints from her part, she has the power to say that (...) from the age of 9 to 21, when she left home, she was systematically raped and constantly threatened by her stepfather's brother. No one knows the trauma and the inner hell she went through and still goes through now when she reminisces about the past, she does not want to hurt and ruin the already ephemeral happiness of her nuclear family.

After a long time of tries **Daria**, a volunteer woman, who gives the impression that she can move mountains, tells of the verbal and physical violence to which she is exposed every night by her husband. Everything happens when the child is asleep. "I will cut you both into pieces and no one will find you!" it is the threat that has been fixed in her mind. She masks traces of abuse with long clothes and make-up. The living fear that his threats will come true paralyzes her and she does not have the courage to do anything.

A terrified mother tells how her eleven-year-old daughter, **Ioana**, managed to tell her parents, after two years, how she was repeatedly sexually harassed and threatened by her playmate's grandfather, their neighbour. The family sold the house and moved to another area. Nothing legal was done against the old man.

Tudor, an adult man with a family and manager of an international company, complains of severe anxiety and insomnia. He does not understand the cause. Everything looks great in his life right now. He recounts, after a while, how he witnessed his mother's beatings and mockery by his father for a long time. He managed to stop the abuse when he became stronger, and when he began earning enough, he offered his mother a new home and support in getting a divorce. His children do not know their grandfather, nor do they suspect that he is still alive.

Roxana holds a PhD in Computer Science from a prestigious American university. Since college, she managed to obtain a scholarship for studying abroad. She has not returned home since. Everything seemed wonderful in her life; she seemed cheerful, sociable and always smiling, the binder of the group of colleagues and the soul of each party. Her proud parents surprised her and came to attend the ceremony. Everything collapsed after that. Roxana developed major depression and needed medication and psychotherapy. With her knees to her chest, a tormented child's soul recounts online her story of unimaginable scenes of physical and verbal violence.

The above are tough events and the reactions are difficult to understand and digest for one who never experienced such a thing. However, *a life experience becomes traumatic when the human body is overwhelmed and reacts by helplessness and paralysis*, says Dr. Peter A. Levine. Moreover, he adds: *When you cannot do anything to change the course of events, the whole system is collapsing.*

(...) and these are just a few brief stories, from the multiple paradoxical life stories of some clients who have crossed the threshold of the psychologist's office. But there are others: in psychiatric hospitals, in social centres, in associations and foundations, in prisons, in cemeteries. Terms such as "abuse", "trauma", "domestic violence" are not limited to only one social or ethnic category, do not depend on age, level of education, financial status or any particular psychological type. Unfortunately, victims and stories of violence and abuse of all kinds are everywhere! Unfortunately, most of these are still unheard stories, because the experienced negative events lead to the victims' changed attitudes towards people, life and future, by losing confidence in others and by projecting negative scenarios for the future.

And this happens because:

We do not know how to prevent violence.

We do not know how to offer hope and support.

We do not know how to speak and teach children from an early age to say NO! to sexual abuse or abuse of any kind.

We do not know how to defend ourselves.

We do not know how to get out of the vicious circle of fear.

We do not know how to ask for help.

We do not know whom to turn to.

We do not know if there is a system to protect us.

We do not know the negative consequences, which add up, and their impact on us after we reveal the aggressor and his deed.

We do not know how to deal with labelling and rejection situations.

We do not know how not to perpetuate in the family, in society, the trauma through which we have gone through or are going through.

It would be important to know about “abuse”, “trauma” and “domestic violence” that:

There are people with resources to overcome the situation and people without resources and solutions.

There are known stories and untold stories.

There are ended lives and lives that have managed to continue their course.

There are direct victims and indirect victims, I can be a victim and so can you.

There is a lot of mistrust and a lot of hope.

There are different coping mechanisms, if we define, according to Lazarus and Folkman (1984), the ongoing process, both cognitive and behavioural, to deal with the situation and control both internal and external burdens that exceed existing personal resources.

By understanding the coping process and the psychological stress experienced by any person when assessing that the environmental demands are dangerous to personal well-being in relation to the insufficient resources available to face the threat, we can understand why someone with an outside perspective can have so many paradoxical reactions in managing the exit of the victim from the situation of domestic violence and abuse. By understanding what these authors describe, one can easily fall into the trap of judging the victim and their gestures of concealment or the return to the relationship with the abuser.

There are two important functions of coping strategies: managing the sources of stress and regulating the emotions associated with stressful events. And there are two major categories of coping based on the above-mentioned features: emotion-focused coping and problem-focused coping. Problem-focused coping aims to analyse, solve or, if not, minimise the stressful situation and involves active attempts to eliminate the sources of stress. Emotion-focused coping aims to reduce or control the emotional discomfort resulting from experienced events.

The research of Lazarus and Folkman (1984) reveal that the victim’s response is closely related to the way she assesses the situation. And if the person in question finds it impossible to control or change the situation on

her own, it is less likely to choose problem-focused strategies and be actively involved in resolving it.

To this perspective, of controllable or uncontrollable situations by the victim, we are all contributing through actions, beliefs, and judgments, with our prejudices and through the support we decide or not to offer. What happens to an individual in a social system influences the whole. In addition, the reverse of this situation is that each element of the system has a direct or indirect contribution, so each of us does or could do something.

I have decided to write this helpful essay.

You ... reader, what do you intend to do?

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PART TWO

Domestic Violence. Judicial Practice

PHYSICAL VIOLENCE

**Substantive request without summoning the parties.
The duration of the protection order is reduced to 2 months
by the court of appeal**

(Bucharest District 3 Court, excerpt of the judgement)

By the civil decision of 06.09.2018 delivered by the Bucharest District 3 Court it was found that, by the application registered with the Bucharest District 3 Court on 05.09.2018, the plaintiff-victim C.D. against the defendant-aggressor P.V. requested the court to issue a protection order providing that the defendant shall keep a minimum distance of 500 meters from the plaintiff, unless the presence of the victim and the defendant is required at the same time in court or criminal investigation bodies, ordering the defendant to keep a minimum distance of 500 meters from the residence of the plaintiff in sector 3, Bucharest, the prohibition for the defendant to travel in certain localities or certain areas that the victim frequents or visits regularly – village B., commune C., Ilfov County and the prohibition of any form of contact, including by telephone, correspondence or any other means of communication with the victim.

In the explanatory statement, the plaintiff showed that the defendant is her son-in-law and on 11.08.2018 she was on the property belonging to her and her husband in village B., commune C., Ilfov County, together with her husband and three of the seven grandchildren, sons of the aggressor. While she was on the street, talking to her neighbours and minors P.M. and P.Ş. were riding their bicycles, the defendant P. came running down the street, sprayed tear gas on the plaintiff and forcibly took the minor M., running with her in his arms towards the car, at speed. Previously, he had forcibly taken the minor Ş., but the latter managed to jump out of the car and ran to the yard. And at that moment too, the defendant had sprayed tear gas on the plaintiff, the minor being also affected.

The plaintiff was frightened, she screamed, putting her hands over her eyes because she could no longer see, and her eyes were stinging very bad.

The plaintiff's husband called the police. Her neighbour took care of the plaintiff applying cold compresses, with ice on her face, until the ambulance arrived. The defendant did not announce his arrival, did not ask to take the child, so she does not understand why he has used force on her.

The next day, on 12.08.2018, the plaintiff went to the National Institute of Forensic Medicine and was sent to ophthalmology. On 03.09.2018, a forensic certificate was issued to her, which is attached to the file. Both the plaintiff and her husband took care of raising their seven grandchildren, thus helping their daughter, and the children spend their weekends with their grandparents because they have a house with a yard which they very much enjoy. The defendant and the plaintiff's daughter are in the process of divorce, which is why the daughter moved to her parents' home in Bucharest. The plaintiff is afraid of the defendant, after that incident, she fears to go out alone in the yard, or on the street. She did not provoke him, they did not have any altercations before, and she did not even see him because at the time of the attack he came from behind, without saying anything.

On 29 August, when the plaintiff's daughter, maternal grandfather and three of the children were coming home from the Botanical Garden, the defendant rushed into the block of flats parking lot, he took one of his daughters, E., and ran away with her on the street. The plaintiff's daughter ran after him, together with other passers-by on the street who immobilised the defendant until the police arrived. At Police Station 11, another tear gas spray was found on the defendant and was confiscated. The police crew who showed up at the scene knew the defendant's behaviour because the day before they were called at the plaintiff's home, as the defendant had caused a scandal shouting and insulting the whole family.

Having analysed the documents and the case file, the court finds as follows:

The plaintiff-victim is the mother-in-law of the defendant-aggressor, who is married to her daughter, and they have seven minor children together. The court notes that the defendant and the plaintiff's daughter have started divorce procedures and the daughter has currently moved at the residence of the plaintiff-victim in Bucharest, District 3.

The court notes that on 11.08.2018, the defendant-aggressor sprayed the plaintiff with tear gas in the face, and the police and ambulance that provided first aid to the victim were called. Subsequently, on 12.08.2018, the plaintiff

went to the National Institute for Forensic Medicine where the forensic certificate no. X/X/12.08.2018 was issued.

From the analysis of this certificate, the court notes that the plaintiff had traumatic injuries that could have been caused by spraying irritating tear gas that can date from 11.08.2018 and required 3-4 days of medical care.

The plaintiff-victim filed a criminal complaint against the defendant, registered with the Pantelimon Police under No. X/13.08.2018.

In view of the above situation, the court notes that the defendant is a person with impulsive, uncontrolled reactions, which can degenerate into more serious acts of aggression on his part, acting under the strong emotional disturbance generated by the current procedure of divorce that takes place between him and the plaintiff's daughter.

In view of the circumstances set out above, the court finds that by the acts of physical violence exercised by the defendant against the applicant, her physical and mental integrity is endangered, and there is a risk that the defendant will commit new acts of violence against her. As a result, it is necessary that this state of danger be removed, following that pursuant to the provisions of Article 23 para. (1) d) of Law no. 217/2003 to order the obligation of the defendant-aggressor P.V. to keep a minimum distance of 100 m from the plaintiff-victim C.D., from her home in Bucharest and from her home located in village B., commune C., Ilfov County.

The court is to rule that pursuant to the provisions of Article 23 para. (1) f) of Law No. 217/2003 the defendant-aggressor is prohibited from any contact with the plaintiff-victim, including by telephone, by mail or in any other way.

DELIVERED JUDGMENT:

The court admits the request submitted by the plaintiff-victim C.D. residing in District 3, Bucharest, vs. the defendant-aggressor P.V. living in District 2, Bucharest.

It issues the following protection order by which, provisionally, for a period of 6 months from the date of issue the following are provided:

Obligation of the defendant-aggressor P.V., residing in District 2, Bucharest, without identification data, to keep a minimum distance of 100 m from the plaintiff-victim C.D., from her home in Bucharest, District 3 and from her home located in village B, commune C, Ilfov County.

Prohibition for the defendant-aggressor of any contact with the plaintiff-victim, including by telephone, by mail or in any other way.

EXECUTORY

NOTE

The defendant-aggressor appealed this decision, which was rejected by the Bucharest Tribunal.

(Bucharest Tribunal, Fourth Civil Section, excerpt of the judgement)

By the civil judgement of 16.10.2018 delivered by Bucharest Tribunal, Fourth Civil Section, it was found that, in the explanatory statement of the appeal, it is shown that on September 5, 2018, the plaintiff filed a complaint against the defendant regarding the issuance of a protection order, motivated by the fact that while she was in the garden, he ran straight towards her and sprayed tear gas in her face, after which he took his daughter P.M. in his arms and ran to the car.

A trial date was set for 06.09.2018, but the defendant was not summoned by post or telephone, and therefore, he was not notified of the request for the issuance of the protection order to be able to prepare his defence by providing evidence to combat the plaintiff's accusations, so he is claiming a violation of procedural rights according to the provisions of Article 153 of the Code of Civil Procedure as well as of Article 27 paras. (2) and (4) of Law No. 217/2003 for preventing and combating domestic violence.

To this end, Article 153 (1) of the Code for Civil Procedure provides that: "The court may decide on an application only if the parties have been summoned or have appeared, in person or through a representative, except in cases where the law provides otherwise."

Article 159 of the Code for Civil Procedure stipulates that: "in urgent cases or when the law expressly provides, the judge may order the shortening of the term for issuing the summons or the procedural act, this being mentioned in the summons or in the procedural act."

At the same time, Article 27 (2) of Law No. 217/2003 for the prevention and combating of domestic violence, states that "the summoning of the parties is made according to the rules regarding the summoning in urgent cases", and para. (4) states that "legal assistance of the person against whom the protection order is requested is mandatory."

That being said, since the special Law No. 217/2003 for the prevention and combating domestic violence provided imperatively that the trial be held as a matter of urgency, with the summons of the parties according to the

rules on summons in urgent cases, and mandatory legal assistance should be provided to the person against whom the protection order is requested, it is considered that the court of first instance wrongly violated these rules and provided in the resolution on setting the time limit that the trial is conducted without summoning the parties.

The defendant mentions that he was not even notified by phone about the existence of this lawsuit, and after studying the case file it is shown that the court tried to ask the Bucharest Bar, through a request, to appoint a lawyer *ex officio*, but in the request all the elements of identification of this case file are wrongly mentioned: the name of parties, the file number, the date of trial of the case. Attached to this appeal is the request sent to the Bucharest Bar, which he found when he photocopied the case file in the archive.

In this regard, considering that the rules on summoning the parties are imperative, it is considered that an absolute damage to the procedural rights has been caused to the defendant, and all the procedural documents drawn up in the case, including the Civil Judgement No. ... /06.09.2018 are null and void, according to Article 175 of the Code of Civil Procedure: “The procedural act is null and void if by non-compliance with the legal requirement a damage has been brought to the party which cannot be removed except by its abolition”.

Given that the request for a protection order is an urgent procedure, the court could have ordered the defendant to be summoned by telephone, especially since the plaintiff had indicated the defendant’s telephone number in the complaint. In fact, even Article. 154 (6) of the Code of Civil Procedure provides that:

The summons and other procedural documents may be communicated by the court registry and by fax, e-mail or other means that ensure the transmission of the text of the document and confirmation of its receipt, if the party has indicated to the court the appropriate data for this purpose. For confirmation, the court, together with the procedural document, shall communicate a form containing: the name of the court, the date of communication, the name of the registrar who ensures the communication and the indication of the communicated documents; the form shall be filled by the addressee with the date of receipt, the clear name and signature of the person in charge of receiving the correspondence and it shall be sent to the court by fax, e-mail or other means.

In the case that the appellant would have been summoned by telephone and he had not answered, although he did not notice in the case file that there was any memo with regard to the telephone call to indicate this, the summons would have still been invalid as the summons was made in a way that did not ensure the communication of the text of the summons to the defendant, nor the confirmation of its receipt.

Consequently, it is considered that by judging the request regarding the issuance of the protection order without summoning the defendant, the summons being imperative according to Law No. 217/2003 which regulates the trial procedure of this order, as well as by the lack of the mandatory appointment of a lawyer *ex officio*, a damage was caused by the violation of the right to defence, a damage that can only be rectified by the annulment of the civil judgement No. X/06.09.2018 and the retention of the case for retrial.

On the merits of the case, the defendant claims that the complainant's allegations are false and without any supporting evidence.

The complainant claims that she is taking care of all the seven minors the defendant has with his wife and that he ran towards her, spraying tear gas in her face, after which he took his youngest daughter, Maria and rushed into the car. In reality, things happened as follows: due to the fact that he is in divorce with his wife, and following their separation, 4 of the minors remained with his wife (who lives in the complainant's house) and 3 of them are at his home, as well as because his wife unjustifiably restricts his right to have personal connections (visiting schedule) with the minors who were at their grandparents, he went there on 11.09.2018 with his two sons to visit the other brothers, because they had missed them. Arriving near the complainant's home, he saw that his daughter Maria and one of her brothers were about 400m away from the applicant (who was in the vegetable garden), walking on the street, in a public place, unattended.

At that moment, the minors saw him and his daughter Maria came into his arms. While he was with the little girl in his arms, he went to the garden of the complainant (his mother-in-law) to tell her that his daughter wanted to go home with him to see her other brothers. He states that his mother-in-law was talking to the neighbours at that moment, the P. spouses, over their wire fence. When she saw him holding the child in his arms, she started screaming at him to let go of the child and she walked out of the garden, speeding up to him, with hands reaching out to his head, to probably scratch his face. At that moment, seeing that he was being attacked by the complainant while he

was holding his daughter in his arms, not being able to defend himself against his mother-in-law's blows, he turned away and tried to get into the car. The complainant caught up with him and tried to pull the defendant, slap him and snatch his daughter from his arms.

In that altercation, he merely tried to avoid her and protect his daughter from the complainant's anger, so not for a moment was he physically violent towards her. In her attempt to grab and hold the child, she took a tear gas spray from him probably either with the intention of attacking him or simply to dispossess him, lest the defendant might use it against her. He had been carrying the tear gas spray at his waist for two weeks also because the complainant's husband (his father-in-law) verbally threatened him "to be careful what behaviour adopts towards his family, otherwise he will take care of him".

In any case, it is essential that when the spray was taken from his waist by the complainant, she triggered it (either accidentally because she did not know how to use it or intentionally to attack him), and that its contents were sprayed both on the defendant's trousers, below the knee as well as on the complainant.

He states that he did not feel when the complainant took the tear gas spray from his waist or when she triggered it, accidentally or not, but he had only realised it when he got into the car to leave, due to the pungent smell emanated by the stained trousers in the enclosed space of the car.

In conclusion, it is stated that the defendant was not the person who sprayed the tear gas, but it was taken by the complainant from his waist and was activated by her, for a purpose, which he does not know: unskillfulness or intention to use it against the defendant.

Although the complainant attached a forensic certificate in support of the claim, requesting to be acknowledged that the traumatic injuries may have been caused by irritating gas, and they required 3 or 4 days of medical care, the defendant considers that the traumatic injuries were not exclusively caused by the irritating tear gas, but were also unconsciously aggravated by the complainant who put the dirty hands on her face (since she stated she was in the garden and "I personally saw her hands with dirt, for at that moment she was gardening"). She worsened the irritations by applying ice compresses on her face until the ambulance came. The effect of the spray passes in 30-45 minutes, water is not recommended for its removal, but only a foaming

solution and no ice should be applied on the face, because thus the situation gets worse.

Therefore, if the complainant had had only the contents of the tear gas spray on her face, its effect would have disappeared in 30-45 minutes without the need for any day of medical care. However, since the forensic certificate states that 3-4 days of medical care were needed, he considers that eye irritation lasted for such a long time due to poor hygiene (rubbing the eyes with dirty hands as well as applying ice to the face) and not due to the tear gas spray.

It considers that the court did not fully analyse the evidence in the file and the adduced evidence was insufficient to rule on the application. From the photocopy of the file case, he did not find the statements of the witnesses (spouses P.) whom the plaintiff indicated in the complaint as being present at the event, and thus he does not know if the plaintiff proposed to produce evidence with those witnesses and if the court delivered the admission of the application.

He states that there were surveillance cameras in the complainant's yard and garden which, had they been on, should have recorded the course of events presented by the undersigned, therefore he demands that the complainant be requested to submit the surveillance cameras recordings for the events of 11.08.2018.

Given that at the time of his appeal, the court of first instance did not draft the reasoning of the decision, so as to establish grounds of appeal on the basis of criticisms that could be given to the civil judgement, it reserves the right as under Article 470 (5) of the Code of Civil Procedure: *in case the term for exercising the appeal starts from another moment than the communication of the decision, the explanatory statement of the appeal shall be made in a term of the same duration, which starts, however, from the date of the communication of the decision*, to submit the grounds of appeal within 3 days from the date of communication of the decision.

He considers that by admitting the protection order his right to visit the minors is restricted because they live with his wife at the applicant's home, and all these court proceedings had the sole purpose of harassing him, in order to keep him away from his children, so that they would forget about the defendant. Moreover, the protection order restricts his right to property. He owns a large number of tools and agricultural machinery in the applicant's

home in the village of B., the plaintiff might alienate goods in the defendant's property until the settlement of the divorce, and the sharing of property between spouses, and thus there might be nothing left to share at the judgment of the division process.

He highlights that it should not be ignored that his wife tried to keep him away from his children by requesting a protection order against him, an order that the court rejected as unfounded, proving that he was not violent towards her or towards the minors. "I enclose herewith the extract from the court web portal. In the light of all the foregoing arguments, I contend that the appeal should be allowed, that the civil judgment should be set aside, that the case should be remitted for further proceedings and that the applicant's claim should be rejected as unfounded." On appeal, the following evidence was administered: documents, witnesses P.I. (joint witness), interviews of parties, and records.

Having analysed the civil decision appealed in terms of grounds of appeal formulated, the court notes the following:

As regards the ground of appeal, concerning the fact that the first court solved the request without summoning the parties, the court holds that according to Article 27 para. (5) of Law No. 217/2003 amended by Law No. 174/2018 (effective from 21.07.2018), *In case of special urgency, the court may issue the protection order without summoning the parties, even on the same day, ruling on the basis of the request and the documents filed, without conclusions of the parties.*

The request for a protection order was filed on 05.09.2018, following the entry into force of Law No. 174/2018.

Thus, the court notes that the first court could solve the request for a protection order, under the conditions of Article 27 (5) of Law No. 217/2003 cited above, without summoning the parties as, moreover, it was ordered by the resolution of 06.09.2018 of the judge of the first instance. In view of the above, the court finds that the first ground of appeal is unfounded.

As regards the ground of appeal concerning the merits of the case, the court holds the following:

With regard to the facts, the court notes that on 11.08.2018, the respondent plaintiff was on the street in front of her house located in Commune C, Ilfov County, talking over the fence with the witness P.I., a neighbour at two

houses away. Along with the respondent applicant, there were two of her grandchildren from her daughter, Ş. and M. According to the witness P.I. heard on appeal, while talking to the respondent plaintiff, the minor Ş was riding his bicycle, and the minor M. was sitting by the fence and playing with the dogs in the witness's yard.

While the plaintiff was talking to the witness, the appellant defendant drove past the witness's court, heading to the court of the plaintiff. According to the statements of the same witness, at that moment he noticed that the plaintiff was heading to the minor M. who had gone to her grandmother's yard. The witness stated that he noticed that the defendant appellant took the minor in his arms, and about 2 seconds later, the witness stated that he heard the plaintiff shouting

"T.! He sprayed me!", T. being the plaintiff's husband, and the appellant put the minor in the car and drove away. In his car was also P., one of the boys of the spouses. The spray remained on the floor until the arrival of the police, according to the statements of the same witness. The respondent received care in her home, from the witness's wife, according to the same statement.

The court also notes that the spouses P., parents of the minors M. and Ş., are in divorce proceedings, and on that day, 3 of the 7 children of the spouses were with their maternal grandparents in the village B, according to the parties in the case.

The appellant argued that he was separated from his wife, and upon their separation 4 of the minors stayed with his wife who lives in her mother's house, and 3 of them are at his home. On that day, he wanted to visit the minors who were with their maternal grandmother claiming that his wife unjustifiably restricts his right to have personal relations with the minors.

The appellant claims that he did not spray the respondent, stating that she tried to grab his child, tried to pull him, slapped him and took his daughter from his arms, and he only tried to protect the minor. Thus, he thinks that the respondent took the tear gas spray that he had and inadvertently or with the intention of using it on him, she triggered it, and he only noticed afterwards that she has turned on the spray by perceiving the pungent smell and the stain on his pants.

The court notes that the witness stated that he did not notice any physical contact between the parties and the fact that the respondent plaintiff shouted "T.! he sprayed me!"

The Court also notes that according to the forensic certificate No. A2/4482/12.08.2018 the respondent plaintiff had traumatic injuries that could have been caused by spraying with irritating tear gas, that these traumatic injuries can date from 11.08.2018 and require 3-4 days of medical care.

The Court also notes that, as stated during the *ex officio* questioning on appeal, the appellant stated that the spray was not in a visible place; since it was attached to his belt and that he was wearing his shirt over his trousers.

With regards to how the event unfolded, the short interval from the moment when the appellant lifted the minor in his arms and the moment when the respondent's cry was heard, the fact that the spray was not in a visible place, that the witness did not notice any physical contact between the parties, the court considers that the appellant's defences that the spray was activated by the respondent are unfounded.

The court also notes that the appellant invoked that since he had the minor in his arms, he could not objectively use the spray. In that regard, the court notes that the witness stated that the appellant had taken the minor under his arm, thus having the other hand free, so that this defence is not well founded either.

According to Article 23 para. (1) of Law No. 217/2003, "*The person whose life, physical or mental integrity or freedom is endangered by an act of violence on the part of a family member may request the court to issue, in order to remove the state of danger, a protection order providing, on a provisional basis, one or more of the following measures – obligations or prohibitions (...).*"

According to Article 3 of the same normative act, "*For the purposes of this law, domestic violence means any inaction or intentional act of physical, sexual, psychological, economic, social or spiritual violence which occurs in the family, or domestic environment or between spouses or ex-spouses, as well as between current or ex-partners, regardless of whether the aggressor lives or has lived with the victim*".

In view of the above, the court considers that the physical violence of the defendant-appellant against the respondent-applicant, as well as the fact that these facts justify the issuance of the protection order are proved in this case. In that regard, the court notes that, according to the appellant, he was wearing a tear gas spray out of fear for his father-in-law, as he had told him to be careful how he behaves towards his family, otherwise he should fear him,

but did not specify what his father-in-law expected of his behaviour or how he feared that his father-in-law's alleged threat would materialise, stating that the latter was a former military solid man.

According to the information provided by the appellant, as long as – according to his own claims – he only wanted to see the minors who were with their grandparents, the court considers that there are no clear data on his need to carry tear gas spray with him on that day, in the context of the appellant's argument.

It is not relevant that the appellant's wife requested in a different case file a protection order against him, which was rejected, because it refers to another event and another person, but it outlines the existence of tensions between spouses.

With regard to the individualization of measures, the court considers that taking into account the concrete situation, respectively the divorce of the spouses, the separation of the minors between the two parents, the misunderstandings of the parents regarding the way to keep in touch with the children, events that greatly strain the relations between the spouses, it is not justified to issue an order for a maximum duration, a 2-month period being enough to achieve its preventive purpose and to warn with regard to desirable behaviour even under these circumstances.

Considering the above, based on the provisions of Article 480 of the Code of Civil Procedure, the Court shall admit the appeal, shall partially change the appealed civil judgement, in the sense that it shall set the duration of the protection order at 2 months and for the rest it shall uphold the appealed civil judgement.

DELIVERED JUDGEMENT:

The Court admits the appeal submitted by the appellant-defendant P.V., residing in Bucharest, District 2 against civil judgement No ... of 06.09.2018 delivered by the Bucharest District 3 Court in file No .../301/2018 against the respondent-plaintiff C.C., residing in Bucharest, District 3. It partially changes the appealed civil decision in the sense that it sets the duration of the protection order at 2 months. For the rest it upholds the appealed civil decision.

Definitive.

NOTE

The protection order was issued by court of first instance for a period of 6 months, without summoning the parties. On appeal, the court reduced the duration of the protection order to 2 months. The aggressor did not violate the protection order, but left from his hometown and moved to the city of Pitești, where he found a new job.

The divorce between spouses was pronounced, and it was established that the 7 children shall have their residence with their mother, all currently living with the maternal grandparents.

For the violence perpetrated by the aggressor in the middle of the street, the wife victim filed criminal complaints and insisted on their resolution.

Request for a protection order rejected on the merits with the reasoning that “the decision delivered in the criminal case has authority of provisional judgment (Article 430 point 4 of the Code of Civil Procedure), which cannot be inverted by the two separate proceedings advanced by the applicant (criminal proceedings and protection order), invoking the same deeds to obtain civil measures as they were rejected in criminal proceedings”. The court admits the appeal and issues a protection order for the victim and for the minor daughter of the parties.

(Bucharest District 6 Court, excerpt of the judgement)

By the delivered civil judgement of 16.11.2018 by Bucharest 6 District Court found that, following the application registered with the court on 31.10.2018, under No. X, the plaintiff S.E.D. against the defendant S.E. requested the court to decide the following measures provided by Article 23 para. (1) of Law No. 217/2003 against the defendant, for a fixed period of 6 months: the obligation that the defendant keeps a minimum distance of 300 m from the applicant, from the minor S.M.I., from the house and the applicant’s place of work and the minor’s school, and ban any communication by telephone, correspondence or any other means with the applicant.

The plaintiff also requested the court to order the defendant to receive psychological counselling or psychotherapy, the obligation to present himself periodically, at an interval established by the court, at the competent police station with attributes of supervising the observance of the protection order, as well as periodic or spontaneous verifications of the defendant’s location by competent bodies.

In the explanatory statement the applicant states that she was married to the defendant, however, she divorced in 2013 due to physical and verbal violence of the defendant. From their marriage, the minor S.M.I. was born on 08.06.2009. After the divorce, the court established a visit schedule through which the defendant could take the minor to his home.

The defendant did not respect the visit schedule and took the minor to his home whenever he wished and without notifying the applicant. The applicant stated that she had observed that the defendant had subjected the minor to

physical and psychological violence, thus she notified the General Directorate of Social Assistance and Child Protection District 6, an institution that evaluated the minor and issued the Re-evaluation Report No. X/19.09.2018. According to this report, her father emotionally abused the minor. By decision No. X/03.04.2018, the District 6 Court issued a protection order against the defendant. The defendant did not comply with the protection order, so, in case X/303/2018, the court ordered the defendant to be convicted for committing offences of non-compliance with the measures of entrusting the minor and with non-compliance with court decisions. Although the plaintiff had filed a criminal complaint against the defendant for the act committed on 08.05.2018, he did not change his behaviour and continued to send insulting messages to the applicant, using this type of violent language in the presence of the minor and the psychologist from the General Directorate of Social Assistance and Child Protection as well. Since the defendant did not comply with the protection order, he was detained for 24 hours.

The applicant attached the following documents to the file: conversations through messages with the defendant, civil judgement No. X/2018, minute of conviction of the defendant, evaluation report and minor re-evaluation.

Having analysed the documents and file, the court notes the following:

The parties were married, and they divorced on 10.12.2013. By civil decision No. X/03.04.2018, the Bucharest District 6 Court partially granted the applicant's request for a protection order. It ordered the issuance of a protection order for ensuring the security of the applicant and rejected the request for the protection order regarding the minor child of the parties – S.M.I. and the applicant's parents, bearing in mind that there was no evidence identified of the defendant's aggressive conduct in relation to these persons.

As consequence of failure by the defendant to comply with the measures imposed by the protection order, by the criminal sentence delivered on 10.10.2018 in criminal case No. X/303/2018, the defendant was convicted for committing the crime provided in Article 32 of Law No. 217/2003 (non-compliance with court decisions) and for committing the crime provided by Article 379(1) Criminal Code (non-compliance with the measures regarding the custody of the minor), but in the case of both convictions it was found that no additional punishment is required.

By the same criminal sentence, the defendant was to undergo psychological counselling in order to accept the relationship between the minor daughter and her mother, during the whole supervision period (2 years).

The court notes that the present application, filed 20 days after the delivery of the sentence, requests the need to take measures by way of the protection order, measures which were rejected by the judgment in the criminal case, as well as measures of psychological counselling that were imposed by the sentence, for the same facts that were the subject of the criminal case (non-compliance with the previously issued protection order), as well as for new facts claimed by the plaintiff, which can be found in reassessment psychological report of the minor prepared on 19.09.2018 by the General Directorate of Social Assistance and Child Protection, District 6 Bucharest.

Following the resolution in the criminal case, after having analysed the evidence and the merits of the criminal case, the judge concluded that it is not necessary to apply a complementary punishment. Therefore the complementary punishments provided by Article 66 m) and n) of the Criminal Code, consisting in limiting the defendant's right to communicate with the victim, or with her family members, or to approach them, the right to approach her home, workplace, school or other locations where the victim carries out social activities and holding that the measures required by the protection order (ordering the defendant to keep a minimum distance of 300 m from the plaintiff defendant and the minor S.M.I., the home, the applicant's workplace and the school of the minor, and to have no contact, including by telephone, correspondence or any other means with the applicant) which have the same content as the complementary punishment and they should not be imposed. At the same time, they are requested by the plaintiff for facts which have been held as offences that have led to the defendant's criminal liability, and for situations which could have been considered by the judge who settled the criminal case (the only new situations invoked by the applicant referred to the Report on the re-evaluation of the minor issued by the General Directorate of Social Assistance and Child Protection approximately one month before the delivery of the sentence). The court holds that the judgment held in the criminal case has provisional *res judicata* authority (Article 430 point 4 of the Civil Procedure Code) and it cannot be contested following two separate proceedings initiated by the applicant (criminal proceedings and protection order), who seeks to determine the application of civil measures for the same facts that were rejected during the criminal proceedings.

With regard to the other requested measures (to order the defendant to comply with psychological counselling or psychotherapy, the obligation to go periodically, at an interval set by the court, at the police station competent to supervise his observance of the protection order, as well as periodic or

spontaneous verifications by the competent bodies of the defendant's location), the court holds the uselessness of ordering these measures by protection order, as long as they were imposed as surveillance measures during the 2-year supervision period, which is longer than the maximum 6 months period during which such measures could have been taken by way of a protection order.

In view of the above considerations, the court shall reject the request of issuing a protection order as unfounded.

DELIVERED JUDGEMENT:

The Court dismisses as unfounded the claim made by the applicant S.E.D., residing in Bucharest, District 6, against the defendant S.E., residing in Bucharest, District 6.

NO REMEDY AT LAW

Delivered in open court today, 11/16/2018

NOTE

The victim appealed against the judgement.

(Bucharest Tribunal, Fourth Civil Section, excerpt of the decision)

By the application registered at the Bucharest District 6 Court on 31.10.2018, under No. x/303/2018, the plaintiff S.E.D., against the defendant S.E., requested the court to dispose by way of a protection order the following measures as provided by Article 23(1) of Law No. 217/2003 against the defendant, for a period of 6 months: the defendant to keep a minimum distance of 300 m from the applicant, from the minor S.M.I. including the forbiddance of any contact with her the by telephone, correspondence or any other means with the plaintiff.

The plaintiff also requested the court to order the defendant to undergo psychological counselling or psychotherapy. It also requested the court to impose the obligation of the defendant to go periodically, at an interval established by the court, at the competent police station in charge with the supervision of the observance of the protection order, and periodic or spontaneous verifications by the competent bodies regarding the location of the defendant.

In support for the application, the applicant stated that she was married with the defendant but divorced in 2013 due to physical and verbal violence of the defendant. From this marriage, the minor S.M.I. was born on 08.06.2009. After the divorce, the court established a visitation schedule according to which the defendant could take the minor to his home. The defendant did not follow this schedule and took the minor to his home whenever he wished and without notifying the applicant. The applicant stated that she had noticed that the defendant had subjected the minor to physical and psychological violence, reason for which she notified the General Directorate of Social Assistance and Child Protection, District 6, an institution that assessed the minor, issuing the re-evaluation report No. XXX, noting that her father emotionally abused the minor. By decision No. X/03.04.2018 the District 6 Court issued a protection order against the defendant who did not comply with it, so that in the file x/303/2018 the court convicted him for offences of non-compliance with measures regarding entrusting the minor and of non-compliance with the court decisions. Although the plaintiff had filed a criminal complaint against the defendant for the act committed on 08.05.2018, he did not change his behaviour and continued to send insulting messages to the plaintiff, using violent language in the presence of the minor and the psychologist from the General Directorate of Social Assistance and Child Protection. Because the defendant did not comply with the protection order, he was detained for 24 hours.

The applicant attached the following documents to the file: conversations through messages with the defendant, civil decision No. X/2018, minutes of conviction of the defendant, evaluation report and minor re-evaluation. (pp. 10-24).

By the Civil Judgement of 16.11.2018, the Bucharest District 6 Court rejected the applicant's claim as unfounded.

The plaintiff S.D.E. appealed against this decision criticising the judgement of the court of first instance for reasons of illegality, the case being registered with Bucharest Tribunal, Fourth Civil Section on 19.12.2018 under file No. X/303/2018.

In the grounds of appeal, the appellant requested admission of her appeal and the change of the contested decision in the sense of admitting the request and issuing a protection order so as the defendant to: keep a distance of 300 m from the victim and from the minor S.M.I.; keep a distance of 300 m from the residence of the victims in Bucharest, District 6; keep a distance of 300 m from the workplace of the victim – SC XXX; keep a distance of 300 m

from the School No. X and of institutions frequented by minor S.M.I. The protection order provided prohibition of any contact, including by telephone, correspondence or otherwise, with the victim; the necessity for the aggressor to follow psychological counselling or psychotherapy, periodic or spontaneous checks by the competent bodies on the whereabouts of the aggressor.

The appellant stated that the Bucharest Tribunal, according to the attached evidence, had communicated the judgment of the court of first instance on 20.12.2018.

In its reasoning, the court of first instance wrongly holds that the criminal sentence No. X/10.10.2018 delivered in the case X/303/2018 by the District 6 Court of Bucharest has *res judicata* authority and on this ground provisionally rejects the application.

First, the sentence is not final; it is being challenged so that one cannot speak of the authority of *res judicata*. According to Article 28(1) of the Code for Criminal Procedure, the final decision of the criminal court has the authority of *res judicata* before the civil court that judges the civil action, regarding the existence of the offence and of the person who committed it. The civil court is not bound by the final decision to acquit or terminate the criminal proceedings regarding the existence of the damage or the guilt of the perpetrator.

Thus, the criminal court was invested with solving a material offence “on the date of ... the defendant committed the offence provided and sanctioned by ...”, and this does not mean that the civil court does not analyse the imminent danger posed to the life, physical and mental integrity of the victim requesting a protection order.

The act of the respondent-defendant to violate a protection order issued by a Court – for which he was detained for 24 hours and placed under judicial control until the conviction was pronounced – had to be regarded as a state of danger to the appellant-plaintiff.

The fact that the respondent-defendant, the plaintiff’s ex-husband – the parties being divorced since 2013 – continues to use trivial language towards the appellant-complainant, sending her unspeakable insulting and obscene messages, which he acknowledged before the court of first instance, only inflicts psychological violence on the victim.

Consequently, the court had to issue the protection order to prohibit the defendant from approaching the plaintiff, and to interdict any further communication with her. It is outrageous that the court of first instance did not take any measures to protect the victim considering that the defendant admitted before the court that he was the author of the messages. This is a clear

proof that he still exercises the same form of intimidation and denigration on the appellant-plaintiff, especially since the respondent-defendant commonly uses this type of language also in the presence of his minor daughter.

The court of first instance does not take into account the notes in the minor's re-evaluation report No. X/19.09.2018. In this Report, the psychologist of the General Directorate of Social Assistance and Child Protection shows that the defendant stated in front of her "I will kill her even if I am imprisoned, I will kill her, at least my daughter will not be raised by a prostitute", "please help me not to end up in prison for killing her."

Secondly, the application also requested the issuance of a protection order also for the minor S.M.I., in accordance with the conclusions of the re-evaluation report mentioned above, but the court did not motivate the rejection of this request regarding the minor.

Although in the re-evaluation report of the minor No. X/19.09.2018, under the section assessing the current situation it is stated that: "following the minor's psychological counselling, it was found that she was being emotionally abused by her father"; although "the psychologist who evaluated the minor recommended that all meetings with his daughter be mediated by a specialist, in order to stop him from this abusive pattern, so that the minor would no longer be affected", the court did not take any protection measures in favour of the minor and allows her to be further taken by her father, although the specialists recommended the contrary.

It is incomprehensible why the court of first instance, which was requested to provide protection for a minor, does not take into account the conclusions of the specialists who, after a year of evaluating the minor, recommended that all the father's meetings with his daughter be mediated by a specialist.

Consequently, the appellant-applicant considers that she is in danger and that restricting the respondent-defendant's access to the minor will determine him to commit acts of physical violence against her or even endanger her life. On the other hand, she cannot allow the minor to be in her father's presence, so that acts of violence such as those described in the report may be further committed against her.

Having analysed the case file, in the light of the reasons for appeal, the court notes the following:

In the appeal, the applicant contested the decision of the first instance in its entirety, both with regard to the grounds for dismissing the application for a

protection order for herself and with regard to the dismissal of the application for protection of the parties' daughter, the minor S.M.I.

As regards the first ground of appeal, the protection order requested by the applicant for her own person, the court notes that the first instance rejected the request considering the existence of a sentence regarding the respondent-defendant according to which no additional sanctions similar to the protective measures have been requested in the case, as they were not deemed necessary.

The argument on which the first instance based its entire explanatory statement appears to be unfounded and illegal for the following reasons:

By the sentence delivered on 10.10.2018 in the file No. X/303/2018 it was established that the defendant committed the offence of non-compliance with the measures regarding the entrustment of the minor provided by Article 379(1) of the Criminal Code, on 08.05.2018, as well as the offence of non-compliance with the court decisions provided by Article 32 of Law No. 217/2003, on the same date, 08.05.2018.

For the first offence, a sentence of one-month imprisonment was established, for the second, a sentence of 3 months imprisonment was established, and in the case of both it was ordered to postpone the application of the resulting sentence of 3 months and 10 days. It was also held, that no additional sanction is required. This sentence is subject to appeal, already declared in cause (page 17).

First, it is noted that the sentence delivered on 10.10.2018 in the file no. X/303/2018 is not final, and, under any circumstances, it cannot be treated as *res judicata* in this civil case.

Secondly, the court finds that the criminal sentence in question does not represent a sentence of the defendant in the present case, as the operative part of the sentence establishes only prison convictions, with the postponement of the application of the resulting conviction.

The complementary measures referred to by the first court are applied from the final disposal of a conviction according to Article 68 of the Criminal Code.

From the mentioned text, it is noted that for the application of complementary sentences there must therefore first exist a conviction decision. The aforementioned criminal sentence by which the defendant was not sentenced to serve time in prison is not included in this category, as it only established a sentence, while its disposal was postponed.

Therefore, as postponing the application of a punishment is not a decision leading to conviction, the judge in the criminal case could not rule with regard to additional penalties, this argument being retained by the first court as unfounded.

Moreover, even if there would be a final conviction, the court finds that the purpose of the two matters – the criminal law and the protection order – is fundamentally different. If a sentence has a sanctioning role for committing a crime, the role of the protection order is to identify a state of danger in which a person is and to prevent the perpetration of new acts of violence, the essential role being to protect the victim of aggression, as opposed to a retributive instrument.

As a result, there is no question of the existence of the *res judicata* authority with regard to complementary measures in criminal law by reference to the measures of protection of the victim in the matter of the protection order.

In addition, acts allegedly committed by the respondent from the present case on 08.05.2018 were considered in the criminal proceedings, while in this case several other alleged violence acts are claimed, as well as the continuation of the existence of a state of danger in which the appellant might be, aspects that are analysed in the two proceedings, from the perspective of their different finality.

In order to question the need to issue a protection order, it is therefore necessary for the court to analyse whether the respondent exercised violence of any kind against the appellant, within the meaning of the provisions of Law No. 217/2003, whether such acts of violence are serious enough to have endangered the life, physical or mental integrity of the victim, and whether they are current, meaning that the state of danger is present and its removal requires a protection order capable of preventing new violence.

Analysing the appellant-applicant's application in the light of these circumstances, the court notes the existence of an undisputable deep state of conflict between the parties.

The parties were married, divorcing in 2013 through a notarial procedure. After the dissolution of the marriage, it was established that minor's residence S.M.I., born on XXX, would be with her mother.

By civil decision No. X/12.06.2017 delivered by Bucharest District 6 Court in the file No. X/303/2016, a father-daughter personal bonding schedule was established.

By civil decision No. X/30.04.2018 delivered by the Bucharest District 6 Court in case file X/303/2018 it was ordered to issue a protection order upon the request of the appellant in the present case, the ex-husband being ordered to keep a distance of 300 m from her and restrain from any contact in any way with the victim for a period of 6 months (merits, pages 11-15).

It is ascertained from the evidence that, although during the period in which the protection order had been already effective, in June, July, August and September 2018, the respondent-defendant repeatedly sent to the appellant-plaintiff a number of phone messages with offensive, humiliating and threatening content (pages 10, 36-40 of the case file), practically resuming the violent behaviour.

This request for the issuance of a protection order was formulated on 13.10.2018, near the deadline of the conclusion period of the first protection order, and the violent behaviour of the respondent-defendant continued during the present judicial procedure (page 50 of the case file, pages 14-28 of the case file).

According to Article 3(1) of Law No. 217/2003, „in the sense of the present law, domestic violence is any intentional act or inaction, except physical or verbal acts of self-defence or defence, committed by a family member against another member of the same family, which causes or may cause physical harm or suffering, mental, sexual, emotional or psychological harm, including the threat of such acts, coercion or arbitrary deprivation of liberty”, while Article 4 of the same normative act enumerates and legally defines the forms under which domestic violence can manifest itself.

Thus, verbal violence is defined as addressing in an offensive, brutal language, such as the use of insults, threats, degrading or humiliating words and phrases. Psychological violence is defined as imposing of will or personal control, provoking states of tension and mental suffering in any way and by any means, demonstrative violence against objects and animals, through verbal threats, ostentatious display of weapons, neglect, control of personal life acts, acts of jealousy, coercions of any kind, as well as other actions with similar effect.

It is noted in this case that the existence of acts of verbal and psychological violence has been proved, their gravity being apparent from the content of the messages, which the respondent addressed to the appellant, who is constantly exposed to particularly offensive language and threats endangering her mental integrity.

It is also noted that the appellant– plaintiff’s state of danger is present, being all the more serious as the new acts of violence were committed during the effectiveness of a protection order, with its obvious violation.

In view of all the factual and legal grounds upheld, the court considers that the appellant’s application for a protection order is well founded.

Regarding the second ground of appeal, concerning the protection order requested by the appellant for the minor, the court shall hold that the rejection of this claim is not motivated by the first instance, in any manner.

As a result, by admitting the appeal and re-judging the application, the court shall consider the minor’s psychological reassessment report, issued on 19.09.2018 by the General Directorate of Social Assistance and Child Protection District 6, after a long-term monitoring of her situation (pages 22-24 of the case file). The document states that the respondent in the present case is subjecting the child to severe emotional stress, under a double aspect: on the one hand he tries to convey a devalued maternal representation to the minor; on the other hand, due to the heavy emotional stress caused by the separation, he has strong feelings of hatred and anger towards his ex-wife. Thus, the minor is experiencing feelings of fear towards her father in such moments. During the monitored period, it was recorded that the father emotionally abused the minor, so that he could find out information about her mother, mostly of a sexual nature. It is also noted that the minor was taught to give certain answers to questions with negative content regarding her mother, being filmed by her father. It was noted from the child’s statements that the father was “preparing” her in advance for the answers, making her to rehearse them before filming. The psychologists reached these conclusions taking into account the audio-video materials provided by the respondent himself, from which the existence of an inappropriate language of the father in front of the child was recorded, as well as a licentious and derogatory language towards the mother.

It was noted that the respondent continued to use the same type of language in front of the child, with manipulations of the minor’s perception and self-victimisation, right in front of representatives from the General Directorate of Social Assistance and Child Protection. It was noted that the respondent does not have the capacity to impose limits in the relationship with his daughter, thus violating the boundaries adult-child/father-daughter. It was also noted that the father could not have a healthy relationship with his daughter without previously receiving appropriate psychiatric-psychological

treatment, his behaviour posing danger to the child's mental and emotional health (pages 22-24 of the case file).

The evidence provided in the case establishes the existence of some concrete facts concerning constant violence, of psychological and verbal nature to which the minor is subjected by the respondent. These are shown by the father's usage, in the direct relationship with his daughter, of vulgar, denigrating and threatening language towards the child's mother, through manifestations of anger and hatred towards the ex-wife, in the presence of the minor, by adopting an abusive behaviour – aggressively taking the child irrespective of the visiting hours. In addition, there are indications of the father's attempt to use the minor to find out information about the appellant, mainly of sexual nature, as well as of his constant acts of conveying to the child inappropriate images of her mother.

The court considers that these manifestations, exercised constantly, including in front of the staff of the General Directorate of Social Assistance and Child Protection represent direct verbal and psychological violence against the child, posing a danger that seriously endangers her normal development.

The danger is even more serious and current, as the specialists from the General Directorate of Social Assistance and Child Protection noted the father's inability to realise the harmful nature of his behaviour towards the minor.

For these reasons, the court finds that the application for the issuance of an order for the protection of the minor is well founded.

With regard to protective measures aimed at removing the ascertained state of danger, the court considers that keeping a minimum distance of 300 meters from the plaintiff, from the minor S.M.I. and from their home located in Bucharest, XXX Street, for a period of 6 months is an optimal way to avoid new acts of violence by the defendant. This would create a safe environment for the appellant and the minor. In addition, as the violence was manifested by threats and insults, the court shall prohibit the defendant from any contact, including by telephone, correspondence, or otherwise with the plaintiff and the minor.

The provision to keep a minimum distance from the minor's school or from the appellant's workplace appears to be useless, as long as the court has already ordered the defendant to keep an established distance from the appellant and the minor.

Given the need for the respondent-defendant to be able to manage his negative feelings towards his ex-wife, both in relation to her and in relation to

their minor daughter, the court considers that it is necessary that the defendant follow psychological counselling for a period of 3 months from the date of delivery of this decision.

For all factual and legal reasons, the court shall admit the appeal, shall change the appealed civil judgement in its entirety in the sense that it shall admit in part the request.

DELIVERED JUDGEMENT:

The Court admits the appeal filed by the appellant-plaintiff S.E.D., living in Bucharest, District 6, against the civil judgement No. X dated 16.11.2018, delivered by District 6 Court of Bucharest, in file No. X / 303/2018 against the respondent-defendant S.E., living in Bucharest, district 6. It modifies the appealed civil judgement in the sense that it partially admits the request.

It orders the issuance of a protection order of the plaintiff S.E.D., personal numeric code XX, as well as of the minor S.M.I., born on XXX, against the defendant S.E., personal numeric code XX for a 6-month period by which it:

– Orders the defendant to keep a minimum distance of 300 meters from the plaintiff, from the minor S.M.I., from their home located in Bucharest, on str. XXX

– Prohibits the defendant from any contact, including by telephone, correspondence or otherwise with the plaintiff and the minor S.M.I.

– Orders the defendant to seek psychological counselling for a 3-month period from the date of this judgment.

– Dismisses the rest of the counts. The judgement is final.

NOTE

We will not comment on the decision of the court of first instance, but the fact that the reasoning of the decision took much longer than the legal deadline has harmed both the victim and the daughter of the parties. Although the court of first instance ruled on the case on 16.11.2018, and the plaintiff made several requests for the drafting of the judgment, declaring an appeal within the legal deadline, the judgment was communicated on 20.12.2018 by Bucharest Tribunal, following the complaint addressed to the President of the Tribunal. Bucharest Tribunal admitted the appeal request as soon as possible, on 21.12.2018, and upheld the appeal, issuing a protection order in favour of both the applicant and the minor. Therefore, during 16.11.2018-21.12.2018 the minor was taken by the father-aggressor in conformity with the personal

ties programme, in the absence of a protection order; although the report prepared by the General Directorate of Social Assistance and Child Protection District 6 on 22.01.2018 mentioned the following: „Regarding the nude photograph of the minor taken by the father and other aspects exposed by the child during the specific intervention, these gestures have erotic connotations and expose the child to situations with erotic-sexual content inappropriate to the age and roles of parent-child/adult-child, which must be avoided by the minor’s father”. Among the proposals issued by the representatives of General Directorate of Social Assistance and Child Protection District 6 was that of “drafting a criminal complaint in order to clarify the situations in which the father exposes his daughter to sexual activity that the minor endures by transgressing social taboos related to family roles”.

In the evaluation report prepared by General Directorate for Social Assistance and Child Protection District 6 on 19.09.2018, it is stated, “Following the psychological counselling of the minor, it was found that she is being emotionally abused by her father. The child is caught in a pincer between the father’s egocentric need to receive exclusive attention from the daughter and a very weak mother; after years of permanent domestic violence trauma, a mother who has so far not been able to protect her daughter from the inappropriate manifestations of the ex-husband. (...) The psychologist who carried out the psychological evaluation of the minor recommended that all meetings with her father be mediated by a specialist so that she would be no longer affected and the father’s abusive pattern be stopped.”

In order to avoid interpretations on the provisions of Article 30(1) of Law No. 217/2003 rep., ANAIS Association formulated a proposal to amend this legal provision. By Law No. 212/11.11.2019, published in the Official Journal no. 912/12.11.2019, at the proposal of the ANAIS Association the modification of these legal provisions was adopted with Article 30(1) having the following content: “The decision on the request for the issuance of the protection order is subject only to appeal, within 3 days from the delivery, if the parties were summoned, and from the communication, if the decision was upheld without their summoning”.

In this situation, the explanatory statement of the decision must be made within maximum 48 hours from the delivery, according to Article 27(8) of the republished Law No. 217/2003, regardless of whether the request to issue a protection order was admitted or rejected.

After the Court issued the protection order, the aggressor followed the decision and complied with it, while General Directorate for Social Assistance and Child Protection District 6 continues to monitor the case of the minor.

Regarding the criminal process, the court of first instance set a sentence of one month imprisonment, for the crime of non-compliance with the measures regarding the custody of the minor, offence provided by Article 379 (1) of the Criminal Code, and a sentence of 3 months imprisonment, for the crime of non-compliance with the court decisions, offence provided by Article 32 of Law no. 217/2003, and in the case of both, it was ordered to postpone the application of the resulting punishment of 3 months and 10 days.

The defendant and the Prosecutor's Office attached to the Bucharest District 6 Court declared an appeal against the criminal sentence, both appeals being rejected by Bucharest Court of Appeal, First Criminal Section.

Protection order issued by the court of first instance. Appeal declared by the defendant, late submission, rejected as unfounded.

(Bucharest District 5 Court, excerpt of the judgement)

By the civil judgement of 11.10.2019 delivered by the Bucharest District 5 Court , it was found that, by the request registered with this court on 09.10.2019, the Prosecutor's Office attached to the Bucharest District 5 Court submitted to the Court on 09.10.2019 – pursuant to Article 227 (6) of Law No. 217/2003 for the prevention and combating of domestic violence, the request to issue a protection order following the previous issuance of a provisional protection order, at the request made by the plaintiff L.E.M. against defendant D.M.L. – her former concubine, consisting in ordering the defendant to keep a distance of 100 m from the victim and her residence, as well as prohibiting any contact with the plaintiff , including by telephone, correspondence or in any other way.

By her statement, registered on 08.10.2019 with the 18th Police Station, L.E.M. complained that on 08.10.2019, around 20:50, the defendant physically assaulted her, kicking her with the foot in the back. Later, when she was lying on the asphalt, he hit her several times with the foot in the head; the incident took place in front of the building where she lives. The plaintiff also stated that, starting January of this year, the defendant frequently hit her, came to her home and contacted her by phone, although she asked him to end this relationship.

Having examined the evidence administered in the case, the court notes the following:

In fact, the court notes that the plaintiff had a consensual relationship with the defendant for 2 years, that the defendant is not in a stable occupation, does not have a job, takes drugs and has a criminal record, according to the criminal record attached to the file.

According to the applicant's statement, the defendant taught her how to use cocaine for the first time, last year, in August, and the last time on 8.10.2019, in the context of a conflict in which the defendant physically assaulted her by

kicking her in the back and head, as well as with the palms over the head and body. According to the applicant, the defendant, who accused her of having sexual intercourse with an acquaintance of his, in whose house he led her and with whom she was confronted, artificially created the dispute. Because she denied the existence of such a relationship, she was put on her knees to apologise, to sit with her chin on her chest and to ask permission if she wanted to talk, during all this time he took her phone to prevent her from calling someone. At the same time, the defendant allegedly forced her to use cocaine and filmed her doing so, in order to blackmail her with this evidence, in case she was tempted to report him for drug trafficking.

Following this incident, the applicant called the Special Telecommunications Service – The Department for Emergency Calls and was taken over by the police, after which she went to the National Institute of Forensic Medicine “Mina Minovici” for forensic examination. According to the evidence presented to the court, the forensic certificate following to be issued on 24.10.2019.

The applicant’s refusal to give him any satisfaction (in the sense of acknowledging the alleged relationship with a third party) led to her verbal aggression by the defendant. She was aggressed by insults and threats, by mental coercion (humiliation), and the last aggressions, those of 08.10.2019, consisting of beating and other types of violence, among which the death threat, induced her a state of fear which led her to turn first to the police and then to the court.

The latest insults and threats are likely to create a real fear regarding a future suffering of a physical harm, as the defendant has previously physically assaulted her, bearing in mind that the compliance with the rules and norms of social coexistence is not a habit of the defendant.

In terms of admissibility conditions, the court finds that hitting, insulting, threatening and psychic coercion are acts of violence, being defined as such by Article 4 letters a) and b) of Law No. 217/2003. Moreover, the defendant addressed insults to the plaintiff, which are considered as acts of verbal violence, provided by Article 4 a) of the same law.

The relations between the parties are limited to the sphere of family relations, given the existing cohabitation relationship between the plaintiff and the defendant.

On the merits of the case, as the facts stand, the court finds first, that there are several forms of violence committed by the defendant against the applicant, including verbal, physical and psychological violence. Therefore,

it is required that the parties no longer live together and have to resume to having limited contacts for a period, in order to avoid generating and escalating a new conflict.

The court considers that the deeds of the defendant fall within the notions of violence specified by Articles 3 and 4 of Law No. 217/2003 and are likely to endanger the applicant's physical and mental safety, meaning that it considers it necessary to take immediate action to ensure that the applicant is protected from the defendant's violence.

The physical violence was committed in the case by creating fear – reasonable, in the plaintiff's opinion – that the defendant would resort to new acts of violence against her. What is essential in situations similar to this one is perpetrating acts of threats with physical damage, in this case, a physical damage to which the victim cannot oppose and which is likely to induce her the reasonable fear that she is in imminent danger. Thus, the history of the parties and the relations between the two require that they do not have contact for a period, in order to avoid the generation and escalation of a new conflict.

In conclusion, for the above reasons, the court shall admit the applicant's request, and pursuant to Article 23 of Law No. 217/2003, the court shall issue a protection order for a period of 6 months from the date of issuance.

DELIVERED JUDGEMENT:

The Court admits the request made by the plaintiff L.E.M., residing in D. commune, Ilfov county and residing without legal forms in Bucharest, District 5, against the defendant D.M.-L., residing in Bucharest, District 4, and consequently, pursuant to Article 23 para. (1) of Law No. 217/2003:

It issues the following protection order by which, on a provisional basis, for a 6-month period from the date of issuance, it provides the following:

– Orders the defendant to keep a minimum distance of 100 m from the plaintiff, from her home in D. commune, Ilfov County, and from the residence where she lives without legal forms in Bucharest, District 5.

– Prohibits the defendant from contacting the applicant by telephone, correspondence or in any other way.

– Orders the defendant to report weekly, every Monday, at 06:00, to the police station responsible for supervising compliance with the protection order (Police Station 18).

– Provides that the Police Stations 18 and 26, through their agents, carry out periodical checks on the location of the defendant, every two weeks, starting with week of October 14-20, 2019.

NOTE

The defendant-aggressor appealed against the judgement.

(Bucharest Tribunal, Fifth Civil Section, excerpt of the judgement)

The Court of First Instance is pending the resolution of the civil appeal declared by the appellant D.M.L. against civil judgement No. x/11.10.2019, delivered by Bucharest District 5 Court in file No. x / 302/2019, in contradiction with the respondent plaintiff L.E.M., having as object a protection order.

The court of first instance relies on and disputes the exception of late submission of the grounds of appeal.

The defendant's defence counsel requests that this exception plea be rejected.

The respondent's defence counsel requests the admission of the exception.

The representative of the Public Ministry presents conclusions of admission of the exception of the late submission of the grounds of appeal.

After deliberation, the Tribunal admits the exception of the late submission of the grounds of appeal compared to the date of communication of the decision, respectively 17.11.2019 and the date of submission, the deadline being 3 days from the communication, and finds the vesting of the right to propose evidence on appeal.

The respondent applicant's defence counsel requested that the evidence be consulted at the hearing of a witness present in the courtroom and that the defendant appellant be questioned in order to prove that the protection order had been violated twice.

The defendant appellant's defence counsel requests the rejection of the requested evidence, showing that there is evidence in the file from the Police Station 18, which shows that the defendant has not violated the protection order.

The evidence is rejected by the representative of the Public Ministry who concluded that it is not useful for solving the case.

The tribunal, after deliberation, rejects the requested evidence, considering that it is not useful to the case with respect to its object and, as there were no longer other requests or evidence to be administered, pursuant to Article 244 of the Civil Procedure Code, finds that the judicial investigation has been

completed and pursuant to Article 392 of the Civil Procedure Code declares the debate on the appeal open.

The defendant's defence counsel requests the admission of the appeal, the change of the contested civil judgement, and on the merits, the rejection of the request for issuing the protection order, considering that the court of first instance issued an illegal and unfounded decision. It shows that the court of first instance did not administer a minimum piece of evidence, retaining only the statements of the adverse party, which do not corroborate with the documents in the file. It was also proved that the appellant did not commit acts of violence against the respondent, the parties having a long-term relationship, and the respondent is the one who has a choleric character and destroyed the appellant's car. It was also pointed out that at the time she testified before the police, she was under the influence of alcohol and there was no evidence of a state of fear caused by the appellant.

With separate judicial costs.

The plaintiff's defence counsel requests that the appeal be rejected as unfounded and that the civil judgement delivered by the court of first instance be upheld in its entirety, showing that the respondent was forcibly taken to the appellant's home and forced to drop the criminal complaint. The respondent-complainant was included in a program for the protection of victims of violence and was assessed by 3 specialists, establishing a maximum degree of risk, her life being endangered. It does not require court costs.

The representative of the Public Prosecutor's Office concludes that the appeal should be rejected as unfounded and that the decision of the court of first instance should be upheld as legal and well founded, given that there are no indications as to the facts of the respondent plaintiff. The defendant's violence was also proven, and the photos in the file show excoriations and bruises, which occurred due to the victim being pushed by the aggressor.

The tribunal, pursuant to Article 394 Code of Civil Procedure, declares the debates closed and postpones ruling.

The Tribunal, having deliberated on the case, notes the following:

By the request for summons registered with Bucharest District 5 Court on 09.10.2019 under No. x/302/2019, the Prosecutor's Office attached to the Bucharest District 5 Court requested a protection order, following the previous issuance of a provisional protection order at the request made by the plaintiff L.E.M. against the defendant D.M.L., her former concubine,

consisting in ordering the defendant to keep a distance of 100 m from the victim and her residence, as well as prohibiting any contact, including by telephone, correspondence or any other form of contact with the plaintiff.

In the explanatory statement it was shown that through the statement given on 08.10.2019 to Police Station 18, L.E.M. complained that on 08.10.2019, around 8:50 p.m., the defendant physically assaulted her by kicking her in the back and later, when she was on the asphalt, he kicked her several times in the head, the incident taking place in front of the building where she lives. Starting January of this year, the defendant frequently hit her, came to her home and contacted her by phone, although she asked him to end this relationship. Considering that, the defendant presents for the plaintiff an imminent risk, as a result of filling the evaluation form in accordance with the provisions of Article 221(3) of Law No. 217/2003, the police officers investigating the case established a provisional protection order consisting in compelling the defendant to keep a minimum distance of 100 m from the victim and her residence in Bucharest, District 5.

The Prosecutor's Office attached to the Bucharest District 5 Court, requested the Bucharest District 5 Court to issue a protection order and the court confirmed the measure taken through the provisional protection order.

By the civil judgement of 11 October 2019 of the Bucharest District 5 Court, the request was admitted and it was ordered, for a period of 6 months that the defendant keep a minimum distance of 100 m from the plaintiff, from her domicile located in the commune, DV., Ilfov County and from the residence where she lives without legal forms in Bucharest, District 5, and not to contact her by phone, by mail or otherwise.

In order to deliver this decision, the first instance held that the applicant had a consensual union relationship with the defendant for 2 years, that the defendant did not have a stable occupation, did not have a job, used drugs and was known to have a criminal record. according to the criminal record file.

According to the applicant, the defendant taught her to use cocaine, the first-time last year, in August, and the last time on 8.10.2019, in the context of a conflict in which the applicant was physically assaulted, being kicked in her back and head, as well as with the palms over the head and body. According to the applicant, the dispute was artificially created by the defendant, who accused her of having sex with an acquaintance of his, in whose house she was led and with whom she was confronted, and because she denied the existence of these relations, she was made to kneel and apologise, to sit with her chin on her chest and to ask permission if she wanted to talk, during all this time her

phone was taken to prevent her from calling someone. At the same time, the defendant forced her to use cocaine and filmed her doing so in order to have blackmail evidence in case she was tempted to report him for drug trafficking. Following this incident, the applicant called the 112 Service and was taken over by the police, after which she went to the National Institute of Forensic Medicine for forensic examination. According to the evidence submitted to the court, the forensic certificate would be issued on 24.10.2019.

The applicant's refusal to give satisfaction to the defendant (in the sense of acknowledging the alleged relationship with a third party) led to her being subjected to verbal aggression, through insults, threats and mental coercion (humiliation), and the last ones, those of 08.10.2019, consisting of hitting and other violence and the threat of death, created a state of fear that led her to address first the police and then the court. On the merits of the case, the court found that there were several acts of violence committed by the defendant against the applicant, including verbal, physical and psychological violence, so that the parties should no longer live together and have limited contact for a period, in order to avoid generating and escalating a new conflict.

The deeds of the defendant fall within the notions of violence provided by Article 3 and Article 4 of Law No. 217/2003 and are likely to endanger the physical and mental safety of the applicant, meaning that the court considered it necessary to take immediate measures to ensure the protection of the applicant against the violence of the defendant. The physical violence was committed in the case by creating the fear – justified, in the plaintiff's view – that the defendant would resort to new acts of violence against her. What is essential in situations similar to the current one is to commit acts of threat regarding a physical damage -, in this case, in which the victim cannot oppose and which is likely to induce reasonable fear – in her view she assesses that she is in an imminent danger. However, the history of the parties and the relations between the two require that they do not have contact for a period, in order to avoid the generation and escalation of a new conflict.

The defendant appealed against this decision, requesting a change of judgement in the sense of rejecting the request for summons. In the explanatory statement, the appellant showed that he was not legally summoned to the trial date of 11 October 2019, as the summons was received on 11 October in the evening, after the settlement of the case.

The judgement is illegal because the court did not administer a minimum piece of evidence but retained the applicant's statements. In fact, the appellant and the respondent had a cohabitation relationship and lived

together for 5-6 months, separating in January 2019. The applicant has a possessive and angry nature and did not accept the idea of separation and on 16 March 2019, she destroyed his car in front of the building; the appellant did not want to harm the applicant, so he did not file a criminal complaint. On 24 August 2019, the applicant came to the door of the apartment where the appellant lives, shouted and kicked, causing a scandal to allow her to enter, and the appellant called 112.

On 10 October 2019, the appellant was heard at Police Station 18, and he stated that he was not violent with the respondent and informed the police that he would be away for a few days in Germany, which is also the reason why he did not challenge the provisional protection order. On 9 or 10 October 2019, the respondent sent him messages on Facebook, but not from the account she is currently using, although the appellant closed his account because the respondent used trivial language, threatened him and tried to blackmail him.

Deciding on the appeal, the court holds that it is unfounded. The staff of the Police Station 26 (page 45, case file), summoned the defendant for the trial date of 11 October 2019, the method of summons being imposed by the urgent nature of the case.

With regard to the merits of the case, the Court notes that the applicant alleged that on 8 October 2019 the appellant physically and mentally assaulted her; given that, the parties had a cohabitation relationship and that the appellant feared being reported to the police because he is a drug user.

The applicant requested the assistance of the police, and pictures made on 8 October 2019 were attached to the file, showing that on that day the applicant had been physically assaulted (page 24 et seq., case file).

Given that the appellant's criminal record shows that he was convicted of crimes under Law No. 143/2000 on preventing and combating illicit drug trafficking and use (page 18, case file), the applicant's claims are credible. In addition, given that the application for a protection order required the defendant not to approach the applicant and not to contact her, the court legally accepted the request and issued the protection order.

In his appeal, the defendant challenged the fact that he had assaulted the applicant and claimed that he was in fact the victim of the applicant's aggression.

However, the appellant did not prove what was claimed – in the appellate court, he was deprived of the right to propose evidence because the lateness of the explanatory statement of the appeal. In addition, the appellant did not provide any explanation for the October 8 incident, did not justify in any

way what he did when the applicant alleged that he had assaulted her and did not provide any explanation for the allegations that he had used drugs and forced the applicant to take drugs; if the applicant's claims had been false, the appellant defendant would have been required to provide a coherent explanation, but he did not do so, which is why the court will dismiss the appeal as unfounded.

DELIVERED JUDGEMENT:

Dismisses the appeal filed by the appellant D.M.L. with identity card (personal numeric code ...), residing in District 4, Bucharest, against the civil judgement No. X/11.10.2019 delivered by Bucharest District 5 Court in file No. X/302/2019 against the respondent plaintiff L.E.M., residing without legal forms in Bucharest, District 5, having as object "protection order", as unfounded.

Final.

NOTE

The victim had a cohabitation relationship with the aggressor and has tried several times to get out of this relationship, but he was constantly looking for her and threatening her. Although the victim hid and frequently changed her home address and place of work, the aggressor identified her through the online applications accessed by the victim and forced her to return to him. The aggressor is a drug user and had an entourage of the same type of people. The victim was constantly being followed, abducted, drugged and forced to give various statements while she was filmed, so that the aggressor could make sure that she would not file a complaint, or denounce him.

The victim obtained a protection order, filed a criminal complaint against the aggressor but, in order to get rid of him permanently, she changed her phone number, closed all her accounts on social networks and left Bucharest, moving in another part of the country.

**Protection order issued for the victim, her mother and sister,
against her mother's concubine. The defendant is ordered to follow
a psychological counselling program, once a week, at the Centre
"A New Chance"**

(Bucharest District 6 Court, excerpt of the judgement)

By civil judgement of 09.09.2019 of Bucharest District 6 Court it was found that, by the request for summons registered with this court on 04.09.2019, formulated by the Prosecutor's Office in favour of plaintiff S.E. and against the defendant I.G., the issuance of a protection order is requested and the establishment of the following measures against the defendant: temporary eviction of the defendant from the house, regardless of whether he is the owner of the property, reintegration of the victim and, if it is the case, of the children in the family house, restricting the defendant's right of using the family house, if possible, only on a part of the common dwelling, so that the defendant does not come in contact with the victim, ordering the defendant to keep a minimal distance from the victim, ordering the defendant to keep a minimal distance from the victim's children or other relatives, ordering the defendant to keep a minimal distance from the protected person's residence, place of work or educational institution, the defendant's prohibition to travel to certain localities or areas that the victim frequents or visits regularly – the residence in District 6 and the employment place in District 2 and the prohibition of any contact, including by telephone, correspondence or otherwise with the victim.

The plaintiff showed that on 03.09.2019 the aggressor hit her while she was in her residence situated in District 6, requiring 1-2 days of medical care for the healing of the injuries – preliminary conclusions of the National Institute of Forensic Medicine.

At the trial date of 06.09.2019, the plaintiff requested a protection order and the establishment of the following measures against the defendant: ordering the defendant to keep a minimum distance from the victim – 300 m, ordering the defendant to keep a minimum distance from the victim's children or other relatives – the mother R.C. and the sister R.G.G., ordering the defendant to maintain a minimum distance from the residence – District

1, and from her place of work – District 2, prohibiting any contact, including by telephone, correspondence or in any other way, with the victim, ordering the defendant to seek psychological counselling or psychotherapy as well as involuntary hospitalization, under the conditions of the Law on mental health and protection of persons with mental disorders, No. 487/2002, republished.

In motivating the specific request, the applicant stated that she lived with her mother, sister and the defendant – the mother’s concubine in a building belonging to his family. It is not the first time he has assaulted them, and the verbal and physical violence that the defendant has been inflicting on her mother have intensified in recent years, since he began consuming alcohol frequently.

On 3 September, she arrived home around 6.00-6.30 p.m. and noticed that the defendant was drunk, and her mother kept reproaching him, telling him that she asked him not to drink in the morning and yet he was drunk. He admonished her and asked her to give him cigarettes. Her mother told him that she had no money to buy him cigarettes and he started cursing her. She offered to go to the kiosk to buy him cigarettes if he gave her money. He ignored her, went to the bedroom and asked her to bring him food. The mother complied, but when she came with the food, he began to admonish her, cursing her and assaulting her, squeezing her neck and saying “tell me where are the cigarettes otherwise I will kill you”.

The applicant was in the other room, and she heard the noise, she went over to him in the bedroom, and when she saw what he was doing to her mother, she shouted at him, “Leave her alone!” The defendant got angry, let go of the mother, rushed over her, hit her with his head in her mouth, and pushed her over the couch. In order to protect herself, she pushed him too, but he grabbed her hand and punched her in the nose. She began bleeding profusely. Her mother screamed and wanted to call the ambulance, but he took the phone from her hand.

Her mother ran into the yard trying to get out in the street, but the defendant followed her, put her down, and strangled her until she peed. She called for help and managed to get out on the street, where there is a kiosk. The salesperson at the kiosk called 112 and some neighbours helped her wash the blood off, gave her wipes in order to clean herself, and housed her and her mother until the police arrived. The mother and the defendant were taken to the Police Station, the SMURD ambulance took her to the University Emergency Hospital Bucharest, where she received medical care, and on 4

September, she went at the National Institute for Forensic Medicine “Mina Minovici”.

She knows that the defendant has been detained for 24 hours. After the defendant was detained, her mother returned home, packed some clothes for them, and moved in with her grandmother, leaving the defendant’s home. She is afraid of the defendant, especially since his mother kept trying to contact them, accusing them of harming her child.

The defendant is not aware of his conduct, even in front of the police, at the hearings; he stated that he hit her because she provoked him.

Having examined all the evidence in the case, the court notes the following:

On 03.09.2019, at 11:00 p.m. the agents from Police Station 20 issued a provisional protection order, valid until 08.09.2019, at 11:00 p.m. By this order, which was confirmed by the Prosecutor’s Office attached to the District 6 Court, the defendant-aggressor was ordered to leave the common dwelling located in District 6 during the validity period of this order, to keep a minimum distance of 300 m from the victim, her residence and her place of work.

From the corroborated analysis of the statements given by the plaintiff and the defendant to the Police Station and from the report drawn up by the police officers at the moment when they went to the parties’ home, the court notes that on 03.09.2019, on the basis of alcohol consumption by the defendant, a contradictory discussion took place between him and the applicant’s mother, and when the applicant intervened, she was hit by the defendant in the area of her face and nose, respectively, being slammed onto the couch. The court also notes that because of the blow, the plaintiff bled heavily, and the ambulance took her to a hospital unit, where she was diagnosed as the victim of a domestic assault.

From the statement of witness, R.C., the court notes that the defendant threatened both her and the applicant, both fearing his reactions when under the influence of alcohol. In addition, the court notes that although the defendant never hit the minor R.G., the applicant’s sister, his general attitude towards her induces a fear of a particular intensity (“when he screamed at her and shook her, the girl peed”), and he threatened the minor’s mother with death.

Therefore, the court shall order the issuance of a protection order for the indicated duration, to order the defendant I.G. to keep a minimum distance of 300 m from the applicant S.E., from the applicant’s mother, named R.C., and

the applicant's sister, named R.G., unless the parties are in court, it shall order the defendant to keep a distance of minimum 100 m from the applicant's residence, located in Bucharest, District 1 and from the applicant's place of work, located in Bucharest, District 2.

In addition, in order to remove the state of danger, the court shall order the measure provided by Article 23(1) letter f) of Law No. 217/2003 and during the protection order it shall prohibit the defendant from any contact, including by telephone, by correspondence or in any other way, with the plaintiff.

Taking into account the seriousness of the acts of violence, the court shall also order the defendant to follow a psychological counselling program at "A New Chance" Centre, within the General Department for Social Assistance and Child Protection of District 6, once a week.

With regard to the plaintiff's request of ordering the involuntary hospitalization of the defendant, under the conditions of the Law on mental health and protection of persons with mental disorders No. 487/2002, republished, the court shall reject it as unfounded, as there is no evidence in the case file attesting to the existence of any mental illness from which the defendant would suffer.

DELIVERED JUDGEMENT:

The Court admits in part the request made by the Prosecutor's Office attached to the District 6 Court in favour of the plaintiff S.E., residing in Bucharest, District 1, against the defendant I.G., residing in Bucharest, District 6.

Provides the issuance of a protection order, for a period of 6 months, by which it:

- Orders the defendant I.G. to keep a minimum distance of 300 m from the applicant S.E., from the applicant's mother, named R.C., and from the applicant's sister, named R.G., unless the parties are in court.

- Orders the defendant to keep a minimum distance of 100 m from the applicant's residence, located in Bucharest, District 1, and from the applicant's place of work, located in Bucharest, District 2.

- Prohibits the defendant from any contact, including by telephone, correspondence or otherwise with the plaintiff.

- Orders the defendant to follow a psychological counselling program at "A New Chance" Centre within the General Directorate for Social Assistance and Child Protection of District 6, once a week.

Dismisses the remaining the action as unfounded on the measures ordered by the protection order.

NOTE

After the protection order, the victim moved with her mother and sister to a rented building. The defendant tried to persuade the victim's mother to reconcile with him, but she refused, however she retracted the criminal complaint against her former concubine. The aggressor did not violate the protection order in the sense of approaching the victims but did not follow the psychological counselling ordered by the court. It should be noted that the court specified, in the protection order, the frequency of psychological counselling sessions (once a week) and the unit in which they should take place – the Assistance Centre for Family Aggressors “A New Chance” within the General Department for Social Assistance and Child Protection of District 6, Bucharest.

**Provisional protection order issued for physical assault,
confirmed by the prosecutor. Protection order issued
by the court for the maximum period**

(Bucharest District 6 Court, excerpt of the judgement)

By the civil judgement of 21.01.2019 delivered by Bucharest District 6 Court, it was found that, by the request registered at the court on 18 January 2019, under No. X formulated by the Prosecutor's Office attached to Bucharest District 6 Court and targeting the victim S.C.M. against the defendant S.C.M., it is requested that by the decision that would be delivered, a protection order against the defendant be issued, consisting of: temporary eviction of the defendant from the dwelling; reintegration of the victim and the minor into the family home; ordering the defendant to keep a certain minimum distance from the victim and the minor, from the residence, from the place of work and the educational unit; ordering the defendant to hand over the weapons in his possession to the police.

In the explanatory statement of the request, the Prosecutor's Office of the District 6 Court showed that, on 17.01.2019, around 5:30 p.m., the defendant hit his wife S.C.M. in the face area with his fists and feet. He also hit the minor S.M.E. with his foot in the back area, causing him an emotional shock. It was also alleged that in December 2018 the defendant broke the dining room door with his fists and assaulted the applicant, who submitted a complaint to the police.

The defendant did not object.

The court approved for both parties the documentary evidence submitted to the case file, both by the plaintiff and through the mediation of the Prosecutor's Office of the District 6 Court, as support documentation for the issuance of the provisional protection order.

Having analysed the case file, the court notes the following:

The victim S.C.M. and the defendant aggressor, S.M.C., are husband and wife, being therefore family members in accordance with Law No. 217/2003.

Of all the evidence administered in the case, consisting of those retained by the police on the occasion of the issuance of the provisional protection order, in the documents and arguments of the parties present in person before the court, it is noted that the defendant, a frequent drinker of alcohol (the defendant himself admits the consumption of at least 2-3 litres of beer daily), is physically violent with the victim S.C.M., his wife, but also with his son S.M.E., whom he hit on 17 January 2019, as it turns out. The court notes that after the defendant repeatedly hit his wife during the marriage, from 2012 with a very high frequency, on 17 January 2019, the intensity of the blows applied by the defendant to his wife reached maximum levels, the latter was strangled, dragged, pulled by the hair, kicked and punched in the head area (evidences of the consequences of the violence were also available in the medical records, but they were also visible in the area of the victim's face, which was personally present in court), all this happening in front of the minor of the family, a boy of only 9 years old, who has witnessed all his life, the scandals between his parents, according to the defendant. The court also notes that on 18 January 2019, the defendant was in pre-trial custody for the act committed on 17 January and that, being personally present before the court, he fully acknowledged the violence against his family, agreeing to all measures requested by the representative of the Public Ministry and to those requested by his wife. The defendant stated that he agrees to the entrustment of the minor to his wife and that they will divorce, and he will no longer be violent with her, and also that if he is released from custody, he will go to live with his parents.

Given that the victims S.C.M. and S.M.E. (the minor of the parties, born on 02.09.2009) have been repeatedly subjected to mental and physical violence of great intensity, likely to endanger their lives, even in the family home, that the defendant is currently under pre-trial detention and cannot take urgent measures regarding the minor, in the exercise of his parental duties, but also the fact that the two spouses work together and there is a risk that (after a possible release) the defendant will approach his wife at work, the court admits entirely the notification of the Public Ministry regarding the issuance of the protection order for the victims S.C.M. and S.M.E., and against the defendant S.M.C., for the maximum duration provided by Law No. 217/2003. Thus, the court orders a protection order by which:

- It orders the eviction of the defendant from the family home in Bucharest, District 6, for a period of 6 months from the date of issuance of the protection order

– Disposes the reintegration into the family home in Bucharest, District 6, of the victims S.C.M. and S.M.E.

– Orders the defendant to keep a minimum distance of 300 m from the victims S.C.M. and S.M.E., in relation to the home of the victims S.C.M. and S.M.E (Bucharest, District 6), the workplace of the victim S.C.M. (from Bucharest, District 4) and the educational unit of the minor victim S.M.E. (XXX Secondary School, Bucharest, District 6), for a period of 6 months from the date of issuance of the protection order, except in cases where the parties are present in court.

– Establishes that the victim S.C.M. will exclusively exercise parental authority over the minor victim S.M.E, born on 02.09.2009, and establishes at the mother's residence the home of the minor victim S.M.E, born on 02.09.2009, for a period of 6 months from the date of issuance of the protection order.

– Orders the defendant S.M.C. to follow a program of psychological counselling and psychotherapy, for a period of 6 months from the date of issuance of the present order.

Regarding the specific request of the victim S.C.M., in the sense of ordering against the defendant the obligation to undergo alcohol rehabilitation, the court holds that in the content of Law No. 217/2003, no ground was identified on the basis of which this request could be admitted, although it could be essentially useful to be admitted in support of the defendant's recovery (apparently dependent on alcohol, although he does not admit it). For this reason, it rejects as unfounded the claim of the victim S.C.M. to order the defendant to undergo alcohol rehabilitation.

DELIVERED JUDGEMENT:

Admits the request made by the Prosecutor's Office attached to the Bucharest District 6 Court regarding the victims S.C.M., residing in Bucharest, and S.M.E., born on 02.09.2009, against the defendant S.M.C., residing in Bucharest, currently detained at General Directorate of Bucharest Police – Central detention.

It orders the issuance of a protection order by which:

It orders the eviction of the defendant from the family home in Bucharest for a period of 6 months from the date of issuing the order.

It orders the reintegration of the victims S.C.M. and S.M.E into the family home in Bucharest.

It orders the defendant to keep a minimum distance of 300 m from the victims S.C.M. and S.M.E., from the home of the victims S.C.M. and S.M.E., from the workplace of the victim S.C.M. and from the educational unit of the minor victim S.M.E., for a period of 6 months from the date of issuance of the order, except in cases where the parties are present in court.

It establishes that the victim S.C.M. will exercise exclusively her parental authority over the minor victim S.M.E., born on 02.09.2009, and establishes the mother's home as the residence of the minor victim S.M.E., born on 02.09.2009, for a period of 6 months from the date of issuing the protection order.

It orders the defendant S.M.C. to follow a program of psychological counselling and psychotherapy, for a period of 6 months from the date of issuance of this order.

Violation of any of the measures ordered by the protection order represents an offense.

Executory.

With the right to appeal within 3 days from the date of delivery. The request for appeal is submitted to Bucharest District 6 Court.

NOTE

The victim divorced the aggressor, and the minor's residence was with his mother. The aggressor was taken in preventive custody for 90 days, after which the measures of house arrest and subsequent judicial control were ordered against him.

The victim lost her job at the time of issuing the protection order, as the employer considered that this was the way he could avoid a scandal caused by the aggressor, who would come to look for his wife at work.

The victim received psychological counselling and psychotherapy, currently participating in the support groups of the ANAIS Association.

Protection order issued. Obligation of the aggressor to keep a distance of 5 m from the victims. The protection distance was changed following the appeal

(Câmpina Court, excerpt of the judgement)

By civil judgement of 02.04.2020 delivered by Câmpina Court it was found that, by the application registered at the Câmpina Court under number x/204/2020 on 30.03.2020, the Prosecutor's Office attached to the Câmpina Court on behalf of the plaintiffs C.C.V., C.I.Ş., C.M.I. requested a protection order against the defendant C.V.C.

In the explanatory statement, it was shown that on 28.03.2020, around 20:30, while he was at home with his wife and daughters, for no reason, the defendant C.V.C. slapped her on the face and strangled his daughter, C.I.Ş. As her mother jumped in her defence, the defendant also slapped his wife C.C.V. with his palm over her face and then slapped the other daughter, C.M.I.

Police officers went to the scene and found visible signs of violence (bruises) on the bodies of the three victims. The aggressor under the influence of alcohol was violent and in the presence of the police, he refused to declare what happened and insulted all the persons who were present.

The measures required to be applied through the protection order are: ordering the defendant to keep a certain minimum distance from the victims, respectively 100 m, and prohibiting any contact, including by telephone, correspondence or in any other way with the victims.

By the application, filed on 01.04.2020, the applicants require that the defendant be ordered to keep a minimum distance from them, namely 200 m, also that the defendant be ordered to keep a minimum distance of 200 m from the current residence of the victims situated in Bucharest, District 6, from the workplace of the plaintiff C.I.Ş. –Bucharest-Ploiesti Road – and from the educational unit of the applicant C.M.I. – Polytechnic University of Bucharest; the victims also required that the defendant be prohibited from traveling in certain localities or certain areas frequented periodically by the victim – Breaza town, street C., Prahova county and that the defendant be ordered to receive psychological counselling.

Having analysed the present civil action in the light of the reasons invoked, the evidence and the defences formulated, the court notes the following:

The court notes that from the judicial investigation results that there is a state of conflict between the parties, respectively between the plaintiffs and the defendant, aspects that result from the existing documents in the case file, but also from the fact that the defendant agreed to the issuance of the protection order.

Thus, the court notes that the applicants' state of fear for their security is justified in relation to the defendant's aggressive behaviour towards them.

The forms of violence are various, they can also affect the mental integrity of the victim and they do not necessarily have to manifest in the form of physical violence.

The defendant's attitude towards the victims leads the court to conclude that the plaintiffs are subjected to mental pressures and physical aggression, which are likely to induce a state of fear.

Thus, corroborating the statements of the plaintiffs with the allegations of the police officer from the Breaza City Police, as well as with the documents submitted to the file, the court finds that in the pending case there is a situation of physical, mental, regular and intense violence against the plaintiffs, caused by the defendant's alcoholism, the reported event not being an isolated one.

In view of the provisional protection order issued by the Câmpina Court Prosecutor's Office and the statements of the parties, all these elements substantiate the court's conviction that the conditions for issuing the protection order are met. The Court considers that it is necessary to establish it for a period of 6 months, in order to protect the plaintiffs, providing the obligation of the defendant to keep a minimum distance of 5 meters from the plaintiffs, from their residence located in Bucharest, District 6, from the workplace of the plaintiff C.I.Ș. – SC MK SRL on Bucharest-Ploiesti Road, from the educational unit – Polytechnic University of Bucharest, Splaiul Independenței no. 313 – of the plaintiff C.M.I., the prohibition of any contact, including by telephone, by correspondence or otherwise with the plaintiffs.

The distance of 5 meters that the defendant must maintain shall respect the right of protected persons to feel safe, but it shall also respect the right of the defendant to move relatively unrestricted.

Under the conditions in which the defendant shall not comply with the protection order, the provisions of Article 32 of Law No. 271/2003 which

provide that the violation of any of the measures provided in Article 23(1) constitutes the offense of non-compliance with the court decision and shall be punished by imprisonment from one month to one year.

In view of the above, the court shall admit, in part, the application according to the operative part.

DELIVERED JUDGEMENT:

The Court admits, in part, the amended application.

Pursuant to the provisions of Article 27 of Law No. 217/2003 amended by Law No. 174/2018, with reference to Article 23(1) letters d), f) of Law No. 217/2003 amended, issues the following protection order by which, provisionally, for a period of 6 months from the date of issuance of this order it provides:

1. Obligation of the aggressor C.V.C., Personal Numeric Code ..., residing in Breaza, Prahova County, to keep a minimum distance of 5 meters from the victims: C.C.V., Personal Numeric Code, from her home located in Bucharest, District 6; C.I.Ș., Personal Numeric Code....., from her home located in Bucharest, District 6, and from her work place – SC MK SRL, Bucharest-Ploiesti Road; C.M.I., Personal Numeric Code ..., from her home located in Bucharest, District 6, and from the educational unit – Polytechnic University of Bucharest, Splaiul Independenței No. 313.

2. Prohibition of any contact, including by telephone, correspondence or in any way with the victims.

Pursuant to the provisions of Article 23(3) of Law No. 217/2003 amended, it orders that the aggressor receive psychological counselling.

Dismisses the other counts as unfounded.

Executory.

NOTE

The applicant victims appealed against this judgement.

(Ploiești Court, excerpt of the decision)

Pending the solution of the appeal declared by the appellants-plaintiffs C.C.V. and C.M.I. all residing in the town of Breaza, Prahova County, currently residing in Bucharest, District 6, against the civil judgement delivered on

22.04.2020 by the Câmpina District Court, against the respondent-defendant C.V.C., residing in Breaza, Prahova County.

By the application registered with Câmpina Court on 30.03.2020, the Câmpina Court Prosecutor's Office on behalf of the applicants C.C.V., C.I.Ș and C.M.I. requested a protection order against the defendant C.V.C. The measures required to be imposed by the protection order are: ordering the defendant to keep a minimum distance from the victims, respectively 100 m, and prohibiting any contact, including by telephone, by mail or by any other means with the victims.

By their application filed on 01.04.2020, the applicants state that they are requesting that the defendant be required to: keep a minimum distance of 200 m from the victims, respectively, that the defendant be required to keep a minimum distance of 200 m from the actual residence of the victims in Bucharest, District 6, from the place of work of the applicant C.I.S. and from the applicant's educational unit C.M.I. – Polytechnic University of Bucharest, Splaiul Independenței No. 313, establish the prohibition for the defendant to travel in certain localities or certain areas that the victim frequents or frequents periodically – Breaza town, St. No ..., Prahova County and the obligation of the defendant to seek psychological counselling.

In law, the request was based on the provisions of Law No. 217/2003.

By civil judgement No. X/02.04.2020 Câmpina District Court partially admitted the modified request and based on the provisions of Article 27 of Law no. 217/2003, amended by Law No. 174/2018, with reference to Article 23(1) letters d), f) of Law No. 217/2003 amended, issued a provisional protection order for a period of 6 months, from the date of issuance of this order, establishing: the obligation of the aggressor C.V.C. to keep a minimum distance of 5 meters from the victims:

- C.C.V., from her home located in Bucharest, District 6
- C.I.Ș., from her home located in Bucharest, District 6 and from her work place;
- C.M.I., from her home located in Bucharest District 6 and from the educational unit, Polytechnic University of Bucharest, Splaiul Independenței No. 313.
- it was ordered to prohibit any contact, including by telephone, correspondence or by any other way with the victims.

Pursuant to the provisions of Article 23(3) of Law No. 217/2003 amended, it was ordered to order the aggressor to seek psychological counselling.

The other counts were also rejected as unfounded.

Within the legal deadline, the plaintiffs, C.C.V., C.I.Ș. and C.M.I., declared an appeal against this judgement under the provisions of Article 30(1) of Law No. 217/2003, requesting the court of judicial control to rule: the admission of the appeal, the partial change of the appealed judgement in the sense of ordering the respondent-defendant to keep a distance of at least 20 m from the appellants, from their home in Bucharest, District 6, from the workplace of the appellant C.I.Ș. and from the appellant C.M.I.'s school; the interdiction for the appellant-defendant to travel in the area where the appellant's mother C.C.V. resides, Breaza city, Prahova county; the rejection of the request regarding the interdiction of the appellant-defendant to contact them and the uphold of the other provisions of the judgement.

With regard to the distance that the defendant shall keep, it is pointed out that, given that the defendant resides in Breaza and the appellants in Bucharest, the imposition of a longer protection distance would not have restricted the defendant's right to drive in any way.

With regard to the protection of the appellants, this cannot be ensured by imposing such a small distance between the aggressor and the victim, if we consider that 5 m is the width of a traffic artery. It is true that the lawmaker has not imposed a protection distance, leaving it to the discretion of the police and the court, but it must be established in such a way as to provide real protection and not endanger the lives of the victims. When establishing this protection distance, the court must also take into account the reaction time of the victims, but also of the police, in case the distance is violated. However, in this case the distance of 5 m can be covered in such a short time that the victim cannot even ask for help, much less to receive help.

This was precisely why the police, through the provisional protection order, forced the aggressor to keep a distance of 100 m from the victims.

Therefore, the appellants considered that the distance that the respondent-defendant must respect should be longer, possibly a distance of 20 m.

As regards the appellant's C.C.V. request that the defendant be prohibited from traveling in certain areas, indicating the home address of her mother, respectively Breaza city, Prahova County, where she will have to travel during the following 6 months, as long as the protection order lasts, the court rejected it generically, without any explanation.

In the arguments for the request for a protection order, C.C.V. stated that her 72-year-old mother lives in Breaza, Prahova County, and asked that the defendant be banned from approaching her home, since she will have to go there and help her mother, or even live with her for a period, if her health

requires it. She stated in the application that her mother's house was a few kilometres distance from the defendant's. Therefore, the appellate court is requested to order the respondent-defendant not to travel in the area where the mother's home is located, respectively Breaza city, Prahova County.

As regards the obligation of the defendant not to contact them by telephone or by any other means of communication, it states that that measure is not necessary, which is why they did not request it in the application for the protection order. So far, the respondent-defendant has not committed acts of verbal violence through the means of communication, so at this time such communication means represent no danger to them. Communication between the parties may be necessary at some point for administrative matters concerning the household and the animals they own together.

Under these circumstances, the amendment of the protection order was requested to eliminate these prohibitions.

In view of the above considerations, the appellants requested the admission of the appeal, the partial modification of the appealed judgement, in the sense of: ordering the respondent defendant to keep a distance of at least 20 m from the appellants, from their home in Bucharest, District 6, from the workplace of the appellant C.I.Ş. and from the appellant C.M.I.'s school, the prohibition for the defendant appellant to travel to the area where the appellant's mother C.C.V. resides; dismiss the plea concerning the prohibition of the appellant from contacting them by phone and uphold the other provisions of the judgment.

Evidence: documents at the court of first instance.

Having examined the documents in relation to the evidence in question, the relevant legal provisions and the grounds of appeal invoked, the Court finds that:

The appellants, victims of the aggressions committed by the respondent, allege, first of all, the unfoundedness of the judgment under appeal as regards the establishment of a distance of only 5 meters which the respondent aggressor is ordered to maintain in relation to the victims, their residence, place of work and educational unit, a distance which the appellants consider to be far too short.

The Court considers the criticism formulated to be justified, given that forcing the aggressor to keep a far too short distance from the victim does not enable the victim to seek the assistance of another person within a reasonable

time, nor does it allow her the opportunity to take shelter in case of possible aggression.

In this context, the appellate court will hold that through the protection order issued it is ensured compliance with the principle of safety of life, of physical or mental integrity or freedom of the victim, so that the measures taken must ensure her effective protection, the establishment of a greater distance that the aggressor is ordered to keep from the victim being among such measures, even if it is likely to restrict the aggressor's freedom of movement.

Taking into account these considerations, the appellate court shall admit the appeal, shall partially change the appealed judgement and shall order the aggressor to keep a minimum distance of 20 m (instead of 5 m) from the victims, their residence, from the place of work of the appellant C.I.Ş. and the appellant's C.M.I. educational unit, as identified in the appellant's judgement.

With regard to the appellants' request that the respondent's ban on contact with them be removed, the court finds that such a measure is not necessary in the case of the appellants' claims that they did not request the imposition of such an obligation on the respondent, which they consider as unnecessary.

Regarding the appellants' request to order the respondent to keep a certain distance from the home of the mother of one of the appellants in Breaza, the court finds that it is not necessary as long as there has been established the aggressor's obligation to keep a distance of 20 m from the appellants, regardless of their location.

Concluding and taking into account all these considerations, part of the criticisms formulated being justified, pursuant to Article 480 New Code of Civil Procedure; the Court shall admit the appeal.

DELIVERED JUDGEMENT:

The Court admits the appeal filed by the appellants C.C.V., C.I.Ş. and C.M.I. all residing in Breaza city, Prahova County, currently residing in Bucharest, District 6, against civil judgement No. X delivered on 22.04.2020 by the Câmpina Court, against the respondent defendant C.V.C., residing in Breaza, Prahova County.

In part, it changes the judgment under appeal to the effect that:

It orders the aggressor to keep a minimum distance of 20 m from the victims, from their home, from the workplace of the appellant C.I.Ş. and the appellant's C.M.I. educational unit, as identified in the judgment under appeal.

It removes the prohibition imposed on the aggressor not to get in contact, even by telephone, correspondence or in any other way, with the victims.

Otherwise, it upholds the provisions of the judgment under appeal.

Definitive.

Executory.

NOTE

On the evening of the incident, the aggressor was taken by the police to the Voila Neuropsychiatric Hospital, where he remained hospitalised until the next day. The three victims also filed a criminal complaint. The aggressor tried to persuade his wife to drop the criminal complaint and the protection order, claiming that he regretted what he had done and that he would retire to a convent for a while. The wife communicated by telephone with the aggressor, but the daughters refused any dialogue, categorically condemning their father's behaviour. The two older daughters tried to persuade their mother to file for divorce, but to no avail.

PHYSICAL AND PSYCHOLOGICAL VIOLENCE

Protection order issued for physical and psychological violence. The victim's state of fear was perceived directly by the court

(Cornetu Court, excerpt of the judgement)

By civil judgement of 10.05.2020 delivered by the Cornetu Court, it was found that the plaintiff D.D.T. filed a complaint against the defendant M.Y., requesting a protection order.

When questioned by the court, the applicant, through her lawyer, stated that she submitted a request for clarification.

The defendant, through his defence counsel, raises the plea of inadmissibility of the request for clarification, arguing that a clarification request cannot be formulated in the contents of a protection order.

The plaintiff, through the defence counsel, and the representative of the Public Prosecutor's Office requests that the exception be rejected.

The court rejects as unfounded the objection of inadmissibility of the request, given that there is no legal provision prohibiting the introduction of such a request in the protection order procedure, and such a request may be made until the closing of the proceedings.

When questioned by the court, the applicant states that she had a relationship with the defendant for 4 months, respectively until April this year, when she decided that this relationship could not continue. On 10 May 2020, she received a message from the defendant informing her that he was sending her some books, photographs, and objects of no particular value. When she opened the door, she saw all this, but the defendant was not around. She got out at the car to clean up and all of a sudden, she saw the defendant, who blocked her car with his, so that she could not pass. She asked him to let her pass; she began to tremble and even told him that she was afraid of him. It also stated that she went to the stairs leading to the balcony; the defendant went after her, blocked her access, started screaming, insulting and punched the balcony door.

The representative of the Public Prosecutor's Office asks the applicant whether the reason for which the defendant attended the psychotherapy sessions was that he was very violent.

The applicant understood that the defendant had resorted to psychotherapy in the context of the conflicts, which his family had to witness because of him and in order to manage his aggressiveness arising from those conflicts.

The representative of the Public Prosecutor's Office asks the applicant if she knows that the defendant is using alcohol and psychoactive substances.

The applicant states that there are some messages confirming this.

When questioned by the court, the defendant states that he has been in Romania for 4 years and he agrees with the issuance of a protection order. On 28.02.2020, after a telephone conversation with the applicant, he arrived home and found all the things packed, he took them and brought them to the car. Regarding the glass, he stated that he did not want to take it, as it was a gift; he regrets that he broke it, but it was not intentional. The glass did not fall on the applicant's leg; she might have stepped on it after it had been broken. He broke the hookah, which he kicked, as he was tense. The defendant believes that the applicant is not afraid of him, and he has repeatedly told her that she was a psychopath indeed. The defendant also stated that all the allegations made by the applicant were, for the most part, true, but he did not grab her by the neck. That day he came to her apartment to leave her some things, in the context in which he was disturbed, upset by what had happened before. The plaintiff sent him a message telling him that she had been drinking a lot and that she wanted to have sex with him, the defendant refused her, not wanting to re-enter a vicious circle, and the petitioner replied that he was not the first option for her anyway and that someone was already on his way, coming to her house. At the same time, the defendant states that he is going to a psychotherapist, that he told the applicant that it would have been better for her to die on the evening when she was sexually abused, with the intention to hurt her. He told her several times during the relationship that she was a psychopath; this was true. Last but not least, after he left the apartment he remained in his parked car for a while, to see what was happening and then left.

Upon being questioned by the court, after having read the messages on pages 27-48, the defendant acknowledges that they were sent by him.

The applicant's defence counsel asks the defendant if he punched the balcony.

The defendant admits that he punched the balcony door.

The representative of the Public Ministry asks the defendant if he consumes alcohol.

The defendant states that he has been consuming a lot lately, after separating from the plaintiff.

As there are no exceptions to be invoked or prior requests to be made, the court gives the floor with regard to the evidence.

Based on Article 258(1) of the Civil Procedure Code in relation to Article 255(1) of the Civil Procedure Code, the court approves in favour of the parties the documentary evidence, rejecting the testimonial evidence proposed by the plaintiff, as not being useful to the case.

Considering itself clarified, pursuant to Article 244 (1) of the Civil Procedure Code, the court declares closed the investigation of the process and, as there are no further requests to be made or other incidents to be resolved, based on Article 392 of the Civil Procedure Code declares the debates open, giving the floor on the merits.

Deciding on the present civil case, the Court finds the following:

A. Application for a protection order

By the application registered with the Buftea Court on 13.05.2020, the applicant D.D.T. sued the defendant M.Y. requesting the court to issue a protection order against him.

In the explanatory statement of the request, specified at the deadline of 14.05.2020, the applicant confirmed that she had a cohabitation relationship with the defendant from December 2019 until April, when she decided that they could not continue the relationship. There were other situations in which she tried to end the relationship, but the defendant contacted her or apologised, promised that he would not be violent again and that he started cognitive-behavioural therapy sessions to temper his anger; he even went to her mother to apologise for his behaviour.

She was impressed by his pleas, and considering her feelings for him, she really hoped he would change. They resumed the relationship, they saw each other occasionally, and during the state of emergency, he came to live with her. However, things did not work out because he was trying to control her, checking her phone and what most bothered her was that he had read, without her permission, the notes in the diary she keeps and in which she makes various notes as was indicated by her psychotherapist.

In 2014, the applicant was the victim of sexual abuse, a fact that she did not hide from the defendant, and since then she has been undergoing therapy, as it is very difficult for her to get over it. The fact that the defendant read very personal things in her diary, which she was not willing yet to discuss with him, created a state of distrust in him, and when he told her that it would have been better that she died that night, the night of sexual abuse, she was deeply hurt and understood that this whole relationship, which the defendant was trying to maintain with her, was based on interest and not on feelings.

On 11.04.2020, the defendant came to her door and asked her to let him in the house, because it was his birthday, and he was alone. She told him that she did not feel comfortable in his presence, but she felt pity for him that he was alone on his birthday. They did not resume the relationship.

On 10.05.2020, she received an audio message via the WhatsApp application, in which the defendant told her that he had left some books, photos and valuables at the door of the apartment. When she opened the door, she saw them, but the defendant was not around; he had probably left those things there some time before sending the message. She got out to her personal car to clean it and found that the defendant was there, and he blocked her car with his car so that she could not pass. She asked the defendant to allow her to pass but his opposition created a visible state of fear, because she began to tremble and even told him that she was afraid of him.

She went to the stairs leading to her balcony, where she can enter the apartment, the defendant came after her, blocked her access to the balcony, started screaming, insulting her and punched the balcony door, then he grabbed her by the neck and touched her face, at which point she pulled his hand away, screaming. There were four people on the street, one of the gentlemen intervened when the defendant got into an altercation with him, and a lady, who was pregnant, shouted at the defendant, asking why he was being violent. The defendant said that she had stolen his passport, at which point the lady suggested that he should go to the police for this, but he cannot beat her. Meanwhile, the applicant entered the house, picked up the phone and called the police, then called her mother and asked her to come to her. The defendant left and the police did not find him on the spot.

Now, she fears that the defendant may return at any time and does not feel safe in her own home. Therefore, from 10.05.2020, the applicant's mother remained living with her in the apartment. Her fear generates anxiety, although she keeps in touch with her psychotherapist.

The request is **exempted from the payment of the judicial stamp duty**, according to Article 26(2) of Law No. 217/2003 for preventing and combating domestic violence.

B. Judgment

At the trial date of 14.05.2020, the court found the termination of the delegation of the lawyer appointed for the applicant, S.M.A., as a result of the presence of the chosen lawyer, rejected as unfounded the exception of inadmissibility of the request invoked by the defendant and approved the documentary evidence, dismissing the witness evidence proposed by the applicant as not being useful to the case. At the same time, the parties presented oral arguments during the hearing.

After examining the documents and records of the case, the court shall admit the request for the following reasons:

A. In law

Domestic violence means any inaction or intentional act of physical, sexual, psychological, economic, social or spiritual violence that occurs in the family or domestic environment or between spouses or ex-spouses, as well as between current or former partners, whether the perpetrator lives or lived with the victim; by family members, it is understood *inter alia* , a reference to persons who have had similar relationships to those between spouses or between parents and children, current or former partners, whether or not they have lived with the abuser, the ascendants and descendants of the partner, as well as their siblings [Articles 3 and 5(1) letter c) of Law No. 217/2003].

B. Application of legal provisions to the situation

Corroborating the evoked legal texts, the court concludes that the issuance of a protection order may be ordered in exceptional situations, the person alleged to have been the victim of violence being the one who has the obligation to prove the fulfilment of the three conditions prescribed by law, respectively: the existence of violent acts; the exercise of violent acts by a family member over another member of the same family; the existence of a state of danger that hovers over the life, mental or physical integrity or freedom of the assaulted family member, which must be removed.

With regard to the first and second conditions, the court notes that the parties were in a cohabitation relationship from December 2019, this being

an intermittent relationship, as they have been living together for a while in the apartment of the applicant situated in the commune C., during the state of emergency. It is apparent from the statements made by the parties during the hearing that, following the termination of the relationship on 10 May 2020, the defendant came to the applicant's apartment, left some objects (books, photographs) on the doorstep and left. The applicant found them, went to the car, and when she got there, the defendant stopped the car next to the applicant's car, starting to talk to her. The petitioner went to the stairs leading to her balcony, from which she could enter directly into the apartment, and was followed by the defendant, who punched the balcony door, and directed his hand towards the plaintiff, the latter grabbing his hand, screaming. In the absence of evidence, the court cannot hold that the defendant grabbed the petitioner's neck.

After a passer-by intervened, with whom the defendant got into an altercation, the plaintiff called the police, announcing what had happened. The defendant left the premises but remained in the area for a short time to see what was happening and left afterwards. The police crew who arrived at the scene found, as the representative of the Public Prosecutor's Office pointed out, that the applicant was in a state of shock and was frightened.

The court also finds that the defendant addressed the applicant several times with the word "psychopath", telling her, out of a desire of hurting her amid their quarrels, that it would have been better if she died on the evening of 2014, when the applicant had been sexually abused (p. 30).

These cumulative aspects, in the context in which the petitioner suffered a real trauma a few years ago, which she tries to get over with the help of a psychotherapist, **instilled in the applicant a serious fear, triggering panic attacks, marked by excessive trembling and uncontrolled crying outbursts, as happened during the court hearing.**

As such, *concerning the third condition*, the court notes that there is a sufficiently high risk to the applicant's mental integrity of nature to impose the issuance of a protection order, in particular in the light of her traumatic experience in 2014, which obviously affected the applicant's psyche, accentuating her fears and feelings.

The court appreciates the sincerity of the defendant, who at the time of the trial specifically acknowledged the allegations made by the petitioner, as well as his efforts to mitigate his potential aggressiveness by participating in psychotherapy sessions, but it considers that a protection order should be issued for protecting all the involved interests. It results from the defendant's

statements that his reactions were a response to certain provocative actions of the plaintiff, who, after being refused by the defendant to have sex, replied that he was the second option anyway and someone else is already heading towards her. However, this issue highlights a conditional aggression on the part of the defendant, for which the issuance of the order would be beneficial, thus avoiding any possible provocative attitude on the part of the applicant.

Consequently, the court *shall admit the application*, as specified, and *shall issue a protection order, for a period of 6 months from the ruling*, by which *it is decided to*:

- order the defendant M.Y. to keep a minimum distance of 300 meters from the applicant D.D.T., except in cases in which, according to the law, their simultaneous presence before the courts, criminal prosecution bodies or other public institutions and authorities is required.

- order the defendant M.Y. to keep a minimum distance of 300 meters from the home of the plaintiff, located in commune C., Ilfov County.

- order the defendant M.Y. to keep a minimum distance of 300 meters from the home of the applicant and her mother, located in Bucharest, District 6;

- prohibit the defendant M.Y. to have any type of contact (by telephone, correspondence or otherwise) with the applicant.

The court shall also *draw the defendant's attention* to the fact that the violation of the established obligations by this decision constitutes an offence of “non-compliance with the court decision” and it is punishable by imprisonment from one month to one year, according to Article 32(1) of Law No. 217/2003.

C. Expenses

The fee of the *ex-officio lawyer* S.M.A., appointed for the applicant according to the delegation series Bif No. 026003/13.05.2020, in the amount of 250 lei and advanced from the funds of the Ministry of Justice in favour of the Ilfov Bar, is in the responsibility of the state, respectively half of the fee provided by Article 2.1 letter o) of the Protocol on the fees due to lawyers, concluded between the Ministry of Justice, the Public Ministry – the Prosecutor's Office attached to the High Court of Cassation and Justice and the National Association of Romanian Bars, according to Article 2(2) of the same protocol, *shall be advanced from the funds of the Ministry of Justice to the Ilfov Bar and shall remain in charge of the state* (f. 19).

At the same time, the fee of the *ex officio lawyer* S.C., appointed for the defendant according to the delegation series Bif No. 026004/13.05.2020,

in the amount of 500 lei, shall be advanced from the funds of the Ministry of Justice in favour of the Ilfov Bar and *shall remain in charge of the state* (f. 19).

D. Enforcement of the judgment

The protection order is enforceable from the moment of its delivery, in accordance with the provisions of Article 29(1) of Law No. 217/2003.

A copy of the operative part of the judgment shall be communicated on the day of delivery to the Police of Commune C., Section 25 of the Bucharest Police and the Police of the City of B. in whose territorial area the parties reside, the provisional order being enforceable immediately by the police or, as the case may be, under the supervision of the police [Article 31 (1) and (2) of Law No. 217/2003].

For the execution of the order, the police officer may enter the family home and any of its annexes, with the consent of the protected person or, in the absence of another family member, the enforcement bodies have the duty to supervise the observance of the protection order by the court decision and to notify the criminal investigation body in case of absconding from execution [Article 31 (3) and (4) of Law No. 217/2003].

DELIVERED JUDGEMENT:

The Court dismisses as unfounded the objection of inadmissibility of the clarifying request raised by the defendant.

Admits the request for summons, as specified, formulated by the applicant D.D.T., residing in Bucharest, District 6, with the effective residence in commune C., Ilfov County, with ID, personal numeric code, against the defendant M.Y., residing in the city of B., Ilfov County, born on April 11, 1997, in Rabat, Morocco.

It issues a protection order, for a period of 6 months from the delivery date, by which it orders the following:

– orders the defendant M.Y. to keep a minimum distance of 300 meters from the applicant D.D.T., except in cases where, according to the law, the simultaneous presence before the courts, criminal prosecution bodies or other public institutions and authorities is required;

– orders the defendant M.Y. to keep a minimum distance of 300 meters from the applicant's actual home, located in the commune of C., Ilfov County;

– orders the defendant M.Y. to keep a minimum distance of 300 meters from the home of the applicant and her mother, located in Bucharest, District 6;

– prohibits the defendant M.Y. from having of any contact (by telephone, correspondence or otherwise) with the applicant D.D.T.

The Court draws the defendant's attention to the fact that the violation of the obligations established in his charge by this decision constitutes the offence of „non-compliance with the court decision“ and is punishable by imprisonment from one month to one year.

Executory.

NOTE

Following the issuance of the protection order, the victim managed to end the relationship with the aggressor, who complied with the court's measures and did not contact her again. The victim continues the psychotherapy sessions. After a while, she overcame the fear of living alone, she resumed her professional activity and wants to participate as a volunteer in workshops on sexual abuse prevention to share her own experience.

**Protection order issued for physical and psychological violence.
The audio recording evidence had an important role in solving the case.
The court notes the defendant's lack of sincerity during the interrogation**

(District 2 Court, excerpt of the judgement)

By the summons registered with the court on 03.02.2020 under No. 2088/300/2020, the Prosecutor's Office attached to the Bucharest District 2 Court submitted the provisional protection order of 31.01.2020 regarding the victim-plaintiff I.A.C. vs the defendant I.T., for the further issuance of a protection order for a period of 6 months providing the following measures: temporary eviction of the defendant from the dwelling; ordering the defendant to keep a certain distance from the victim, from the minors I.T.L., born on 02.02.2016 and I.V.R., born on 02.02.2018 and from her residence.

In the explanatory statement of the request, it was shown that on 31.01.2020, following verbal differences, the defendant became verbally aggressive, started throwing things around the house and a porcelain cup in the direction of the plaintiff, after which he slammed her against the front door of the apartment, slapped her on the face, and strangled her.

In proof of the request, documents were submitted, respectively the findings of the police officer issuing the provisional protection order, the victim's statement, photographic plates, audio recording.

The plaintiff's request for summons is exempted from the judicial stamp duty, pursuant to Article 26 (2) of Law No. 217/2003.

On 05.02.2020, the plaintiff submitted clarifications (pages 59-61) stating that she adheres to the application for the issuance of the protection order, supplementing with the following additional points: the measure to prohibit the defendant from any contact, including by telephone, by correspondence or in any other way with the plaintiff, entrusting the minor children to her or establishing their residence at the plaintiff, ordering the defendant to seek psychological counselling.

Having examined the request for a protection order in relation to the evidence administered and the incidental legal provisions, the court notes the following:

In fact, it is held that the defendant I.T. is the husband of the plaintiff I.A.C., and they have together two minor children, respectively the minor I.T.L., born on 02.02.2016 and I.V.R., born on 02.02.2018, being thus family members within the meaning of the provisions of Article 5 letter b) of Law No. 217/2003.

From the evidence administered in the case and taking into account the claims of the parties, it is noted that on 31.01.2020, following some verbal differences, the defendant became verbally and physically aggressive, started throwing things around the house, after which he hit the plaintiff when she was standing at the front door of the apartment, the plaintiff showing that he slapped her several times on the face and squeezed her neck, slammed her head against the wall and the door.

After hearing the audio recordings filed in the applicant's case file, the court found the defendant's particularly trivial language to his wife, very ugly, particularly offensive and degrading words that could not be reproduced in the case, many threats to the applicant, including death threats, which fall into the category of acts of verbal and psychological violence, according to Article 4 letters a) and b) of Law No. 217/2003 and which thus fully justify the issuance of the protection order against the defendant for the removal of the state of danger, within the meaning of the provisions of Article 23 of the Law, even in the absence of acts of physical violence claimed by the victim in the present case.

From the statement of the witness proposed by the applicant, named M.C., the applicant's mother who perceived her emotional state immediately after the parties' quarrel on 31.01.2020, when she has arrived to the applicant's home, it is noted that, emotionally and mentally, the applicant was very scared due to the defendant's violent behaviour, she trembled with fear that the defendant might return home to harm her again.

With regard to the physical condition of the victim-plaintiff, witness M.C. stated that, although that evening the applicant did not show any visible marks on the body due to the defendant's blows, bruises began to appear the next day, and the witness accompanied the plaintiff to the National Institute of Forensic Medicine to obtain a forensic certificate. The witness also stated that, as of the evening of 31.01.2020, the plaintiff complained of headaches and back pain and these pains could have been caused by the defendant's blows, so that the physical violence in question was also taken into account (photographic plates some of these showing the applicant with bruises on her body were included in the file).

Moreover, given that, most often, conflicts between spouses take place in their home, in privacy, it is almost impossible to have a direct witness to the physical violence exercised by the aggressor, but by corroborating the other evidence administered in the case and in order to remove the state of danger which has proved to exist in the case, as regards the life and physical or mental integrity of the plaintiff, it is necessary to issue a protection order for the maximum period, in relation to the circumstances of the case.

At the same time, during the court hearing on 05.02.2020 in which the plaintiff was present in person, the court directly perceived her state of major fear due to the particularly aggressive behaviour of the defendant.

In addition, the court notes the defendant's dishonesty and total lack of sincerity, in relation to the way in which he understood to answer the questions in the interrogation administered in question (to all questions his answer being "NO"), regarding the particularly degrading insults and serious threats addressed to his wife, since from the audio recordings the court found directly about these, including about the insults and threats referred to in questions 1-6 of the interrogation.

The court notes that a first condition that must be met in order for a protection order to be issued is the act of violence by a family member against another member of the same family. A second condition is the existence of a potential danger for the life, physical or mental integrity or freedom of a person, a danger that must be removed by issuing the protection order, these conditions being met in the present case. Thus, it is noted that we are dealing with a case of acts of physical, verbal and psychological violence, proved by the evidence administered in the case.

In relation to the defendant's particularly violent behaviour, in physical, psychological and verbal terms, the court will approve the plaintiff's request, following to order measures against the defendant as the plaintiff requested them, for the maximum duration provided by law.

Thus, the court considers in this case that the purpose of the law is to issue a protection order for a period of 6 months to prevent further perpetration of acts of domestic violence. Given the high degree of danger to the victim created by the defendant's recent acts of physical, verbal and psychological violence, this order is eminently a temporary measure which will have effect only for this period, while allowing the defendant to reflect on what happened between him and his wife, and to conclude that inappropriate, irresponsible behaviour, contrary to good morals does not lead to anything good for any of

them and by becoming aware of the seriousness of this behaviour to succeed in the future to censor his uncontrolled and spontaneous reactions.

The court will reject the end of the request regarding the obligation of the defendant to keep an established minimum distance from the children of the parties, the minors I.T.L., born on 02.02.2016 and I.V.R. born on 02.02.2018, as unfounded, because, although the event took place in the presence of the minors, the acts of violence were not directed against them, appreciating that keeping distance from the mother of children is sufficient for the emotional balance of the children and for avoiding the parental alienation of children from their father.

For all these reasons, the court will admit the application in part.

With regard to the accessory part concerning the obligation of the defendant to seek psychological counselling during the protection order, it is noted that it is well founded, given the irresponsible behaviour of the defendant, including in the presence of the minors.

Therefore, taking into account the manifestations of the defendant consisting in acts of physical, psychological and verbal aggression against his wife, the court considers that it is necessary for the person in question to receive psychological counselling.

As such, pursuant to Article 23 para. (3) of Law no. 217/2003, the defendant will be ordered to seek psychological counselling during the period of validity of the protection order, an activity that will be performed by the General Direction of Social Assistance and Child Protection, District 5 Bucharest.

DELIVERED JUDGEMENT:

The Court admits in part the request having as object a protection order, a notification formulated by the Prosecutor's Office attached to the Bucharest District 2 Court for the plaintiff I.A.C. (and appropriated by it), residing in District 2, Bucharest vs. the defendant I.T., residing in District 5, Bucharest.

The present protection order is issued, by which the following measures are ordered provisionally against the defendant I.T., respectively for a period of 6 months from the date of issuance, pursuant to Article 23(1) letters a), d) and f) of Law No. 217/2003 on the preventing and fighting against family violence:

– temporary eviction of the defendant from the building located in Bucharest, District 2.

– orders the defendant to keep a minimum distance of 200 meters from the applicant I.A.C. and from the applicant's residence in Bucharest, District 2.

– prohibits the defendant from any contact, including by telephone, correspondence or otherwise, including Facebook, Messenger, WhatsApp, etc., with the plaintiff.

Establishes the residence of the minors I.T.L. and I.V.R. at their mother's home during the effectiveness of the protection order.

Pursuant to the provisions of Article 23(3) of Law No. 217/2003, orders the defendant to seek psychological counselling during the effectiveness of the protection order, an activity that will be performed by the General Directorate of Social Assistance and Child Protection, District 5 Bucharest.

Rejects the request regarding the obligation of the defendant to keep a certain minimum distance from the children of the parties, the minors I.T.L., born on 02.02.2016 and I.V.R., born on 02.02.2018, as unfounded.

NOTE

The defendant appealed against the decision.

(Bucharest Tribunal, Third Civil Section, excerpt of decision)

Analysing the appealed judgement in connection with the grounds of appeal invoked, as well as in relation to the provisions of Articles 476-479 of the Code of Civil Procedure, the Tribunal finds, in fact and in law, that the appeal is unfounded.

Thus, the Tribunal finds, the same as the court of first instance, that the evidence administered in the case demonstrates that on 31.01.2010, the appellant-defendant I.T. was aggressive and violent towards his wife I.A.C. and in the presence of minors – their 4 and 2-year-old children.

As it results from the minutes of the police at the time of the visit at the conjugal home, in the kitchen of the house there were pieces of glass scattered on the floor, the respondent accusing the appellant, who was no longer at home at that time, of physical violence against her.

During the appeal, the respondent submitted the forensic certificate stating that she has traumatic injuries that could have occurred on 31.01.2020 by hitting, which require 2-3 days of medical care. The left pectoral bruises mentioned in the forensic certificate reveal the existence of bruises in the left

area of the chest of the respondent's body. At the same time, bruises on her arms and forearms are mentioned.

From the statement of witness M.C., the respondent's mother, who was present immediately after the event in the parties' house, it results that the respondent was scared, that she was worried that the minors might step on the pieces of shattered glass, that the bruises appeared the next day, and that she complained of head- and backaches. The witness also states that she saw broken doors and that talking to the respondent's neighbours she told her that everyone in the building was scared by the appellant's behaviour and that they cannot sleep at night, being terrorised. The witness also states that the 4-year-old son kept repeating "I will kill you ..." and the little one was crying.

From the testimony of this witness, from the audio recordings and photos submitted to the case file it results that even before the event of 31.01.2020, there were physical and verbal aggressions of the appellant towards the respondent, and his aggressive behaviour in the family is taken into consideration, justifying the issuance of the protection order.

The appellant's claims that the respondent has had an unstable and violent psychological state for several years triggered by her relationship with her mother are unproven, and his attempt to reveal another factual situation, in the sense that the respondent causes conflicts, is not supported by any evidence. Thus, the Tribunal considers the forensic certificate which mentions the injuries suffered by the respondent on 31.01.2010 and which the appellant cannot justify, while he only refers to the grammatical errors in the recitals of judgement, and to the fact that the injuries stated in the certificate do not correspond to the respondent's report.

There is no reason for the removal of the forensic certificate, as it is hard to believe that she was assaulted by someone else in the period between the evening of 31.01 and the morning of 01.02, when she went to the Forensic Institute. The photos submitted to the file, which reveal previous such situations, are taken into account to outline the behaviour of the appellant in the family before the event on 31.01. The appellant's claims that the photographs were taken in other circumstances cannot be taken into account, as it is not credible that a person would photograph the injuries caused by a dog, child, bracelet or dermatitis. Verbal violence is proven by audio recordings. The statement of the witness I.E., the appellant's mother, does not reveal concrete aspects that took place on the evening of 31.01, but only show that the appellant was scared, angry and that the respondent had previously, in the summer and autumn of 2019, accused the appellant that he strangled her.

The extrajudicial statements submitted to the case file are not taken into account, as they do not comply with the provisions of the Code of Civil Procedure on the evidence through witnesses and do not represent a written document in the meaning of Article 265 Civil Procedure Code.

The situations revealed by the appellant regarding the way in which the minors are raised exceed the object of the present case, and will be analysed in the settlement of the divorce action, which the appellant claims to have filed.

By means of the protection order, no measures are established regarding the appellant's personal connections with the minors, under the conditions in which the order was not issued towards the minors, since the procedure provided by Law No. 217/2003 does not regulate the settlement of such a request, following that, by way of common law, the manner in which the appellant will contact them will be established, in case the parties do not agree.

The tribunal considers that the court of first instance correctly assessed that there are fulfilled conditions provided by Article 23 (1) of Law No. 217/2003 regarding the existence of a danger to life, to physical and mental integrity by the perpetration of an act of violence by a family member.

Consequently, the Tribunal, finding that the judgement is legal and justified, based on Article 480 (1) Code of Civil Procedure shall reject the appeal as unfounded.

DELIVERED JUDGEMENT:

The Court dismisses the appeal formulated by the appellant-defendant I.T. against civil judgement No.... of 06.02.2020, delivered by the Bucharest District 2 Court, against I.A.C., as unfounded.

NOTE

The parties are married and have two minor children together. Tensions arose after the premature birth of the first child, because the wife paid special attention to him. Two years later, the second child was born. The quarrels also started from the financial problems generated by the fact that the husband did not work, the couple being also supported by their family members.

The defendant-aggressor filed an appeal against the provisional protection order and a request for revocation of the protection order, which are presented in this paper.

**Physical and psychological aggression exercised by the concubine.
Protection order issued with the aggressor's obligation
to seek psychological counselling.**

(Bucharest District 2 Court, excerpt of the judgement)

By the request for summons registered with Bucharest District 2 Court on 29.08.2019 under file number X/300/2019, the plaintiff Ş.D. requested a protection order against the defendant S.N., providing the obligation of the defendant to keep a minimum distance from her and her home, from her nephew, as well as the prohibition of any contact with the victim, including by telephone.

In the explanatory statement, the applicant stated that she had been in a cohabitation relationship with the defendant for approximately 2 years and that due to the violence against her she decided to end the relationship.

The applicant states that he assaulted her several times and she has also received death threats.

In law, she invoked the provisions of Law no. 217/2003.

In evidence, the applicant requested the approval of documentary evidence.

The request for summons is exempted from the judicial stamp duty, pursuant to Article 26 (2) of Law No. 217/2003 on combating domestic violence.

The defendant did not file an objection and did not appear before the court.

The case was examined based on documentary evidence and evidence through the witness R.O.L.

Pursuant to Article 27 of Law No. 217/2003, the defendant was provided with legal assistance, being represented by the *ex-officio* lawyer L.F., based on the delegation for free legal assistance.

Having examined the evidence, the court notes the following:

According to the provisions of Article 23 (1) referred to in Article 1 (3) of Law No. 217/2003 for the prevention and combating of domestic

violence, *the person whose life, physical or mental integrity or liberty are endangered by an act of violence by a member of the family may request the court to issue a protection order with the scope of removing the state of danger, provisionally providing for one or more of the following measures – obligations or prohibitions:*

a) temporary eviction of the aggressor from the family home, regardless of whether he/she is the owner of the property;

d) the obligation of the aggressor to keep an established minimum distance from the victim, from the children of the victim, from other relatives or from the residence, place of work or educational unit of the protected person;

e) the prohibition for the aggressor to travel in certain localities or certain areas that the protected person frequents or visits periodically;

f) the prohibition of any contact, including by telephone, by correspondence or in any other way, with the victim;

h) the custody of minor children or the establishment of their residence.

The protection order is a measure to support and protect the family. Its purpose is to remove the state of danger that looms over a person's life, mental or physical integrity or freedom as a result of an act of violence by a family member.

A first condition that must be met for the issuance of a protection order is the exercise of acts of violence by a family member against another member of the same family. A second condition is the existence of a danger to the life, physical or mental integrity or freedom of a person, danger that must be removed by issuing the protection order.

The court notes that the parties in the present case developed relationships similar to those of the spouses, which results from the statement of the witness heard in the case.

Therefore, by reference to the provisions of Article 5 (1) letter c) of Law No. 217/2003, the parties are family members.

Regarding the acts of violence, the court retains the provisions of Article 4 of Law No. 217/2007, according to which domestic violence can manifest itself in various forms. Thus, the acts of violence that may justify the issuance of a protection order consist of acts of verbal, mental, physical, sexual, economic, social or spiritual violence. The manner in which they manifest is specified in the legal provisions mentioned above (“insults, brutal language, such as threats, degrading or humiliating words and expressions”, “infliction of personal will or control, induction of tension and mental suffering in any

way and by any means, demonstrative violence against objects and animals, through verbal threats, ostentatious display of weapons, neglect, control of personal life, acts of jealousy, coercion of any kind, as well as other actions with a similar effect”, “bodily harm, or health injury by hitting, pushing, slamming, pulling hair, stinging, cutting, burning, strangulating, biting, in any form and of any intensity, including disguising these as being results of accidents, by poisoning, intoxication, as well as by other actions with similar effect”).

It is noted that on 10.08.2019, the defendant repeatedly called the plaintiff by phone and accused her of being with another person, of being involved in another relationship. It is also noted that the applicant tried to end her relationship with the defendant who contacted her and tried to persuade her to meet, as is can be seen from the text messages in the file. The court notes that a forensic certificate issued in the name of the applicant was submitted to the case file. From the document it results that on 19.05.2018 violence was committed against the applicant, and compared to the statement of the witness heard in the case, the court notes that the defendant perpetrated this violence.

According to Article 23 (1) of Law No. 217/2003, once the existence of intentional acts of violence between family members has been found, a series of measures may be provisionally ordered, expressly stipulated and limited, consisting of obligations and prohibitions, which are necessary and proportionate to the purpose of preventing and combating domestic violence, in relation to the concrete data in question.

In view of the above considerations, the court shall accept the application and decide *the issuance of a protection order for a period of 6 months*.

DELIVERED JUDGEMENT:

The Court admits the request made by the plaintiff Ș.D. residing in Bucharest, District 2 against the defendant S.N., residing in Bucharest, District 2.

The Court orders the issuance of a protection order for a period of 6 months, by which it:

– Orders the defendant to keep a minimum distance of 200 m from the applicant;

– Orders the defendant to keep a minimum distance of 200 meters from the applicant’s home, located in Bucharest, District 2;

- Prohibits the defendant from any contact, including by telephone or in any other way with the victims;
- Draws the defendant's attention to the fact that the violation of the measures ordered by the protection order constitutes the crime of non-compliance with the court decision;
- Orders the defendant to seek psychological counselling in a centre for aggressors.

Executory, without summons and without the expiration of any term.

NOTE

The aggressor did not appeal against the protection order, nor did he violate the order. The victim, together with her minor son, born from another relationship, left Bucharest and moved to another part of the country.

She bought a house and found a job that allowed her to support herself financially. She did not resume her relationship with the aggressor.

The victim comes from the Republic of Moldova and was raised by her grandmother, from the age of 2, when her parents divorced. Her mother was not involved in raising her, nor did she show any affection.

The victim received psychological counselling and wanted to find out why she was only attracting abusive men into her life.

PSYCHOLOGICAL VIOLENCE

Protection order issued for a period of 2 months in favour of the applicant and her two minor children

(Bucharest District 2 Court, excerpt of the judgement)

By civil judgement of 01.03.2019 Bucharest District 2 Court found that, by the request for summons registered at the court on 28.02.2019 under No. X, the plaintiff D.M.N. requested, against the defendant D.A., a protection order by which the court should decide on a provisional basis to order the defendant to keep a minimum distance of 300 m from the plaintiff, to keep a minimum distance of 300 m from the applicant's children, D.A.L. and D.L.E., to keep a minimum distance from the applicant's residence and from the workplace or educational unit of the protected persons. The respective addresses were indicated as the Bucharest Theological High School and XX Gymnasium School, Ilfov County. The order also provided prohibition of any contact, including by telephone, by mail or in any other way, with the victim, the custody of minors D.A.L. and D.L.E, and the obligations of the defendant to undergo treatment for alcohol rehabilitation.

In the explanatory statement it was shown that the parties are spouses, married for 16 years.

It was also pointed out that from the marriage of the parties the minors D.A.L. and D.L.E. were born. The applicant stated that, on the basis of alcohol consumption, the defendant had committed acts of violence against her. She also pointed out that the defendant usually humiliates her in the presence of the minors, the latter intervening between the parties to stop the acts of violence.

She stated that the conflicting environment in which they live led to a depression of the minor D.A.L., who was diagnosed with an acute disorder with symptoms of schizophrenia. The applicant stated that she was currently hospitalised with her minor daughter in an emergency reception centre for victims of domestic violence, but the other minor remained at home with his

father and the applicant could not take him back because she is scared of the defendant.

Having examined the evidence in the case, the court notes the following:

The plaintiff and the defendant are spouses, parents of minors D.A.L. and D.L.E.

In fact, from the statement of the witness T.V.L., the applicant's sister, the court notes that the relations between the parties entail an excessive relationship of authority on the part of the defendant, who regularly exercised acts of psychological violence against the applicant. The witness also reported that the minors D.A.L. and D.L.E. were present during the acts of violence between the plaintiff and the defendant.

The witness further stated that the applicant had sought the assistance of an association for the protection of victims of domestic violence at the request of her daughter, D.A.L.

From the testimony of witness D.C., the court notes that the defendant consumes alcohol, but in an amount assessed by the witness as moderate. The court also notes that in reality the relationship between the parties also had conflicting moments, which led to heated discussions between the spouses, a fact also reported by the witness. In addition, the defendant fed the strained relationship by calling the plaintiff by the nicknames "Delia" or "Elena", the latter being references to a neighbour with behavioural disorders, according to the witness' statement.

From the hearing of the minor, the court notes that she showed indifference to the relations between the parents.

Consequently, in order to prevent the recurrence of such acts and to give the defendant the opportunity to understand the consequences of his actions, the court shall decide the issuance of a protection order, for a period of 2 months. This is considered as being proportionate to the severity of the violent acts and to the fear induced to the victim, the duration of the order effectiveness representing a necessary time for the aggressor to become aware of the effects of his actions.

Equally, the court shall require the defendant to keep a minimum distance of 100 meters from the plaintiff and from the minors D.A.L. and D.L.E., prohibit the defendant from contacting the plaintiff and the minors D.A.L. and D.L.E., entrust the minors D.A.L. and D.L.E. during the protection order to the applicant and establishes their residence at the applicant's residence.

The court notes that it is in the best interest of minors not to have a personal relationship with their father for a limited period, in order to mitigate

the effects of mental violence withheld by the court and to give all parties involved the opportunity to become aware of the effects of their own actions.

The court considers that the distance of 100 meters is a sufficient measure of protection to respect the integrity of the applicant and of the minors, in relation to the violation of the right of free movement of the defendant.

The court also considers that it would be disproportionate to restrict the defendant's freedom of movement by prohibiting him from traveling near educational institutions attended by the minors, given that maintaining a distance of 100 meters from them, wherever they are, is a sufficient protection measure.

The court considers that from the evidence administered it cannot be inferred that the defendant consumed alcohol excessively, so that it will reject the count regarding his obligation to follow a treatment for alcohol rehabilitation.

DELIVERED JUDGEMENT:

The Court admits in part the request made by the applicant D.M.N., currently residing at Association X, Emergency Reception Centre for Victims of Domestic Violence, based in Bucharest, District 2, against the defendant D.A., residing in Ilfov County, requesting a protection order and, consequently:

It orders the issuance of a protection order, **for a period of 2 months**, by which it:

- Orders the defendant to keep a minimum distance of 100 meters from the applicant;

- Orders the defendant to keep a minimum distance of 100 meters from minors D.A.L. and D.L.E.

- Prohibits the defendant from contacting the applicant and the minors and D.A.L. and D.L.E by phone, correspondence or any other means

- Entrust the minors D.A.L. and D.L.E. during the period of the protection order to the applicant and establishes their residence at the applicant's home.

With the right to appeal within 3 days from delivery. The request for appeal is submitted to the Bucharest District 2 Court.

NOTE

The victim lived with the two minors in a shelter for victims of domestic violence belonging to an NGO. The victim managed to find a job. The minor's mental condition did not improve during the protection order, which lasted only 2 months, as the father, who had abused her emotionally, sent her messages through the rest of the family (paternal grandparents, aunt), which induced a state of self-blame for the situation created. Following the termination of the protection order, the aggressor contacted the two children and victimised himself in front of them. He claimed that he had various life-threatening illnesses triggered by his longing for them and by the fact that they refused to return home. He continued to denigrate his wife, accusing her that the purpose of requesting a protection order against him was to deprive him of his liberty. He was emotionally blackmailing the minor, either by promising to buy various items (phone, tablet), or by not allowing him to take the puppy from his father's home, which the minor raised and to which he is very attached. Each time the aggressor father asked the minor to come to his home to see the puppy, and refused to send him at least a photo with it. As things degenerated and the parties' daughter had a new emotional breakdown that prevented her from attending school, the victim filed a new request for a protection order, which is presented below.

**Protection order issued for the applicant for a period of 3 months,
and for the two minor children for 2 months**

(Bucharest District 2 Court, excerpt of the judgment)

By civil judgement of 04.06.2019 delivered by the Bucharest District 2 Court, it was found that, by the application for a writ of summons registered with the Bucharest District 2 Court on 29.05.2019 under number X, the plaintiff D.M.N. requested the issuance of a protection order against the defendant D.N., requesting the court to order him to keep a minimum distance from the victim, from the minor children of the parties, to prohibit any contact, including by telephone, by correspondence or in any other way with the victim, to entrust the minors and establish their residence at the mother's home, and to order the defendant to undergo psychological counselling.

In support of her application, the applicant stated that the parties got married 16 years ago and that they had two children. She stated that the defendant, as a result of alcohol consumption, was assaulting both her and her two minor children, and the conflictual environment and the violence caused the minor D.A.L. to suffer from depression in December 2018, the minor being admitted to the Clinical Psychiatric Hospital Prof. Dr. Alexandru Obregia in February 2019 and diagnosed with acute psychotic disorder with symptoms of schizophrenia.

The applicant further informed the court that she and the minor decided not to return to the parties' shared home and that they were housed in a centre for the protection of victims of domestic violence. She stated that by Civil Judgment No X, delivered by the Bucharest District 2 Court in case No. X, a protection order was issued in favour of her and her two minor children.

The applicant states that, after the protection order had expired, she agreed that the defendant could talk to the children, but that the defendant chose to portray himself as a victim by telling the children that he was ill and asking them to return home.

Having analysed the evidence in the case, the Court notes the following:

The plaintiff and the defendant in the present case are married, as shown by the marriage certificate, series X No Y, issued by the Town Hall of X on

4 August 2002. The marriage of the parties resulted in two children, namely D.L.E., born on 13.05.2009, according to the birth certificate series X No. Y issued by the Town Hall of District 5 on 21.05.2009 and D.A.L., born on 03.09.2003, according to the birth certificate series X No. Y issued by the Town Hall of District 4 on 10.03.2003.

By civil decision no. X/01.03.2019 delivered by the Bucharest District 2 Court in case No. X, a protection order was issued for 2 months, the defendant being obliged to keep a minimum distance of 100 m from the plaintiff, from the two minor children of the parties, being prohibited from contacting them, considering that the defendant exercised psychological violence on the plaintiff and indirectly on the two minors.

The witness S.L.D.'s statement shows that, after the protection order issued against her on 01.03.2019, the defendant repeatedly asked the applicant and her two minor children, both by telephone and in person, to return home, mentioning health problems caused by their departure, the children being disturbed by the discussion, the minor being unable to take a test because of the feelings thus generated, requests that are circumscribed to the notion of psychological violence provided for in Article 4 para. (1) (b).

The court finds that the defendant is not capable of realising the consequences of his speech on the applicant and the two minors, his statement that the applicant and the minors are responsible for his state of health amounting to an act of psychological violence, the minors thus being placed in the position of choosing to return to a perceived violent environment to save the father or to remain in a safe environment and save the mother. At the same time, the court took into account the recommendations made by the child's doctor, namely, to avoid exposing the child to a tense microclimate, as the child needed emotional support.

Thus, the Court finds that, based on the evidence adduced, the applicant has proved that the defendant has committed acts of psychological violence against her and her children such as to justify the issuance of a new protection order.

In the light of the above considerations, the court shall grant the application and order a protection order to be issued, so as to: order the defendant to keep a minimum distance of 300 m from the applicant for a period of 3 months from the date of the judgment; order the defendant to keep a minimum distance of 300 m from the minor children of the parties for a period of 2 months from the date of the judgment; prohibit the defendant from any contact, including by telephone, or in any other way with the applicant for a period of 3 months from

the date of the judgment; prohibit the defendant from any contact, including by telephone, or in any other way with the children for a period of 2 months from the date of the judgment; order the defendant to place the minor children in the care of the mother and to establish their residence with the mother for a period of 3 months.

Given that the protection order is an instrument with limited effects, the court considers that the defendant must attend psychological counselling sessions in a centre dedicated to aggressors, so that he can learn to recognise the emotional needs of the applicant and the children and refrain from making statements that are hurtful to them.

It also recommends that the applicant undergoes psychological counselling in order to overcome the feelings generated by the violence to which she has been subjected, as well as to consult a psychologist with regard to minors, so that they understand what is and what is not acceptable behaviour, and to overcome the emotions generated by the episodes of conflict they had witnessed.

DELIVERED JUDGEMENT:

[The court] Admits in part the application brought by the applicant D.M.N., residing in the Centre for the Protection of Victims of Domestic Violence, District 2, against the defendant D.A., residing Ilfov County.

– Orders the defendant to keep a minimum distance of 300 m from the applicant for a period of 3 months from the date of judgment.

– Orders the defendant to keep a minimum distance of 300 m from the minor children of the parties for a period of 2 months from the date of the judgment.

– Prohibits the defendant from contacting the applicant, including by telephone, correspondence or in any other way, for a period of three months from the date of judgment.

– Prohibits the defendant from contacting the minors D.A.L. and D.L.E., including by telephone, correspondence or in any other way, for a period of two months from the date of judgment.

– Orders the children D.A.L. and D.L.E. to be placed with the applicant for the duration of the protection order and to reside at the applicant's home for three months.

– Orders the defendant to undergo psychological counselling in a centre for offenders.

Draws the defendant's attention to the fact that breach of the measures ordered by the protection order constitutes the offence of non-compliance with the judgment.

NOTE

The victim filed for divorce, which was settled by agreement of the parties, the minors' residence being established with the mother. The mother moved in with the minors in an apartment but, following a visitation schedule, the minor was persuaded by the father to stay with him, using various tricks: the father allowed the minor to have the dog in the house and sleep with him, bought him a state-of-the-art telephone and promised that they would both go on holiday, while continuing to denigrate the mother in front of the child, saying that she was not capable of providing them with a stable home and that they would be runaways for life. The father kept the minor so as to coerce the victim to return home. The perpetrator stopped contributing financially, trying to put the victim in financial difficulty, especially since she had no income during the state of emergency. However, the victim had turned to the help of her family and had been doing housework for various people, so that she was able to manage the expenses for herself and the minor without having to turn to the perpetrator.

**Psychological violence caused by jealousy. Protection order issued
for maximum period**

(Bucharest District 2 Court, excerpt of the judgement)

By civil judgment of 22.10.2019 delivered by the Bucharest District 2 Court, it was found that, by the application for a writ of summons registered to this court on 17.10.2019 under No. X/300/2019, the plaintiff E.E.M. requested, in contradiction with the defendant E.G., the issuance of a protection order against the defendant by which the court would order the defendant to keep a specified minimum distance of 100 metres from the applicant, as well as to prohibit any contact, including by telephone, correspondence or any other means, with the applicant.

In support of the claim, it was pointed out that the parties are ex-spouses; they divorced as the applicant could no longer bear the resentment, humiliations and insults from the defendant because of totally unjustified jealousy.

She also pointed out that, since the divorce, she and the child have been living in another building, allowing the defendant to see her child and pick him up whenever he wants. She also pointed out that the defendant does not stop insulting her directly, even in front of the child, speaking to the child in a slanderous manner, as in the messages attached to the application to the court.

She noted that she is terrorised by the defendant, that he sends her hundreds of messages a day that he tries to call all her family, friends, and acquaintances and tries to denigrate her in front of everyone who knows her. She also revealed that he has tried to befriend various colleagues and work colleagues on Facebook, mocking her and trying to denigrate her in front of them.

She also pointed out that the harassment with hundreds of messages a day is likely to affect her daily life, endangers her health and also her job, as she is unable to concentrate fully at work because of the offensive and threatening messages.

She also stated that the defendant threatens her with leaking compromising private images or filing criminal complaints about the phantasmagoria in his mind: “sex orgies in his house”, “child pornography”, etc.

She indicated that because of this continuous harassment and denigration, she felt a general state of insecurity, helplessness, lack of confidence, depression, and she even had to go to therapy in order to overcome this period.

In support of the application, documents were submitted, namely documents containing sexually suggestive messages from the defendant to the applicant, a divorce certificate, a certificate showing that the applicant is undergoing psychological counselling.

The application is exempt from stamp duty under Article 26 (2) of Law No. 217/2003.

Although legally summoned with a copy of the action and the attached documents, the defendant did not file a statement of defence, but appeared in court to express his procedural position on the application. He submitted documents from which, in principle, his undemonstrated obsession with his ex-wife's prolonged infidelity emerged.

In the case, evidence was given in the form of documents and testimonial evidence consisting of the hearing of witness C.M., whose statement is attached to the file.

At the hearing on 22.10.2019, the applicant requested to supplement the initial application with "*order the defendant to undergo psychological counselling or psychotherapy*", and the court shall rule on the application together with the initial application.

Analysing the evidence in the case, the court holds that:

In fact, the parties are ex-spouses, and from the contents of the application for the issuance of the protection order and the defendant's statement, the court notes that since the date of divorce, in July 2018, the defendant has been harassing the applicant with hundreds of messages per day, messages with denigrating, threatening, insulting and sexual content, which are likely to cause the applicant physical, mental and psychological dysfunctions.

The Court finds that, because of the defendant's delusion that the applicant had been unfaithful to him during their marriage, he adopted an obsessive attitude towards the applicant, after having failed to obtain communication from the applicant following hundreds of unjustified messages, and having reached the point where he resorts to such tricks: befriending the applicant's work colleagues, befriending the applicant's Facebook friends and acquaintances, calling on her family, all with the aim of denigrating her, mocking her, and

damaging her image both in her own eyes and in her environment, at work and within her family.

During the administration of the material means of evidence consisting of photographs provided by the defendant, the court held that he really believed strongly in the alleged infidelity of his ex-wife, managing to see – where the court, the representatives of the parties and the prosecutor did not see anything obscene or incriminating – men, four in number, who were going to participate in a so-called “orgy” with the applicant.

The court, from the witness statement, but especially from the *ex officio* examination of the defendant, finds that the defendant has harassed and is harassing the applicant and notes that he admits to having continuously denigrated the applicant, all justified by the fact that the “infidelity” of his ex-wife created “a strong state of shock”.

The Court notes that all this harassment, denigration and messages led to a general state of insecurity, helplessness, lack of confidence and depression in the applicant, and that she even went to therapy in order to overcome this period, attending psychological therapy sessions.

In the light of the facts thus established, the Court finds that the action is well founded.

From the interpretation of the provisions of Article 23 para. (1) and Article 3 para. (1) of Law No. 217/2003, the court holds that the following general conditions must be met cumulatively for a protection order to be issued: an act of violence in any of the forms listed in Article 4 a) to g) of Law No. 217/2003 must be committed; the act of violence must be serious enough to be considered as endangering the victim’s life, physical or mental integrity or freedom, the act of violence must be committed by one of the persons listed in Article 5 a)-e) of Law No. 217/2003, persons who are considered family members.

In ascertaining whether those conditions are met in the case in question, the court finds that the parties, in their capacity as ex-spouses, are regarded as family members within the meaning of Article 5 b) of Law No 217/2003, and that the defendant’s conduct towards the applicant, manifested in the form of battery and threats of violence, such as to cause the applicant’s fear for her physical integrity, consists of verbal and psychological violence within the meaning of Article 4 a) and c) of the law.

At the same time, the acts of violence are undeniably serious, causing harm and suffering to the applicant, who fears for her physical and mental integrity.

The defendant's verbal violence towards the applicant may create a state of danger for the applicant's physical and mental state, a situation of imminent danger requiring urgent protective measures.

Therefore, the court holds that the cumulative conditions laid down in Article 23 of Law No. 217/2003 are met, thus it shall grant the application and order the issuance of a protection order for a period of 3 months from the date of this judgment.

DELIVERED JUDGEMENT:

[The court] Admits the application brought and supplemented by the applicant E.E.M., residing in Bucharest, District 2, against the defendant E.G., residing in Bucharest, District 2.

Orders the issuance of a protection order for a period of 6 months by which, pursuant to Article 33 of Law No 217/2003 with reference to Article 23 para. (1) d), f) and e) of Law No 217/2003:

- Orders the defendant to keep a minimum distance of 100 metres from the applicant E.E.M.

- Orders the defendant to keep a minimum distance of 100 metres from the applicant's home in Bucharest, District 2.

- Orders the defendant to keep a minimum distance of 100 metres from the applicant's place of work – Ilfov County.

- Orders the defendant to undergo psychological counselling or psychotherapy.

- Prohibits the defendant from any contact, including by telephone, correspondence or otherwise, with the applicant E.E.M., with the exception of written messages announcing the date and time of the collection and bringing of the minor E.L.A., born on 23.05.2012, to the access door of the condominium where the applicant resides, and written messages announcing a situation of danger to the life or health of the minor.

Maintains the defendant's right to have personal relations with the minor E.L.A., the right to spend free time with the minor at the defendant's home or outside it, excluding the minor's home, where he lives with the applicant.

Pursuant to Article 23 para. (5) of Law No. 217/2003, the court draws the defendant's attention to the fact that violation of the measures ordered by the protection order constitutes a criminal offence under Article 32 para. (1) of Law No. 217/2003.

Pursuant to Article 29 of Law No 217/2003, this protection order is enforceable.

NOTE

Although a protection order was issued, the defendant continued to inflict psychological violence on the victim. Since he knew her schedule and route, in the morning, when she was taking the child to school, the abuser either stopped at the traffic lights next to the victim's car or cut her off at intersections, pretending that they had met by chance. The vilification of the ex-wife continued throughout the duration of the protection order, but not through messages sent directly to her, but worse, through the child, who was told in a tendentious way that his mother was no longer interested in him because she was having an affair with their godfather or that she would take the child to the godfather's place of residence because she was moving in with him. The child began to become aggressive with the mother, accusing her for abandoning him to his father for another man, using abusive expressions, learned from his father, inappropriate for his age. The victim made a referral to the General Directorate for Social Assistance and Child Protection for the minor to be included in a counselling programme.

REJECTED APPLICATIONS

Application for a protection order made by the minor daughter against the mother. Application dismissed as unfounded

(Bucharest District 1 Court, excerpt of the judgement)

By a request for the issuance of a protection order registered with the Bucharest District 1 Court on 24.10.2018, under number 29038/299/2018, the complainant C.A.M., assisted by legal representative C.M., requested the following measures to be taken against the defendant C.M.: eviction of the defendant from the dwelling located in XXX, apt. XX Street, and order him to keep of a minimum distance of 300 m from the minor's home at XXX Street, apt. XX, as well as from the educational facility, i.e. School XX, prohibiting any contact, including by telephone, by correspondence or in any other way, with the victim.

In fact, she pointed out that her parents divorced and after the divorce, she was entrusted to her father for her upbringing and education as she wished.

She mentioned that the main reason for the divorce, which also led to her estrangement from the defendant, her mother, was her leaving the family and the marital home, having moved to the house in XXX, where she started to take care of animals and to grow a vegetable garden.

The complainant indicated that she did not want to live in the countryside and for this reason, being abandoned by her mother, she moved closer to her father, with whom she lives in the apartment of her paternal grandparents, while her mother remained in the family home, in the neighbouring apartment.

After the start of the divorce proceedings, the complainant claimed that her mother had completely changed her behaviour, becoming aggressive with various family members, becoming obsessed with her daughter's situation, seeking her out, following her around all the time, including at school, bothering her with phone calls and messages and going out into the street just to see her and keep an eye on her, so after numerous complaints to the police, the applicant decided to lodge this order.

The most recent event that made her want to be completely separated from her mother happened on 08.10.2018, in the morning, when the minor was leaving for school, at which time her mother followed her, caught up with her and stopped her on the way to talk to her. The minor refused to talk to her mother and asked her to leave her alone; she even called her father to ask him to take her to school to get rid of her.

However, the complainant said the defendant lost her temper and grabbed her by the hair, forcing her to get on the bus and not to return home. A shop assistant from a nearby shop who knew the family and their problems, intervened to help the minor, so that at some point the minor managed to free herself and go home, going from there with her father to the police to lodge a complaint and to court.

The complainant also reported that because of the situation in her family, she underwent psychological counselling to improve her relationship with her mother.

At the end of the action, the complainant was adamant that she needed to get away from her mother, to be left alone by her mother, that the defendant did not understand that she did not want to have any contact with her and that she could no longer tolerate the constant harassment.

In law, she relied on the provisions of Law No 217/2003.

In support of her claim, she proposed to adduce evidence in the form of documents and witnesses.

The application is exempt from stamp duty under Article 26(2) of Law No. 217/2003.

At the hearing on 26.10.2018, the court noted the absence of the defendant, who was legally summoned and informed, proceeded to hear the minor in chambers and reserved the case for judgment.

Having analysed the case-file, the Court notes the following:

The applicant is the daughter of the defendant and the named C.M. and was born on XXX (f. 15).

After the divorce, the minor was entrusted to the father until she reached the age of majority, and her residence was established at his home, at XXX.

The Court notes that a series of documents (f. 38-57) consisting of complaints, referrals, responses from competent authorities and investigation reports were submitted to the case file, which show that during 2017-2018 the named C.M., as legal representative of the complainant minor, often

complained about the manner in which the defendant tried to contact her daughter, to communicate effectively with her and to take an interest in her upbringing.

Analysing the subject matter of the complaints, the court finds that they essentially concern the failure to respect the minor's privacy, her capacity to decide for herself, persistently contacting her and an excessive close supervision, which have triggered a feeling of intrusion into her privacy.

However, the court cannot fail to observe that only the complaints to the authorities have been filed, without their response to any investigations carried out, without showing whether measures were taken against the defendant as a result of the complaints, considering that the mere complaint does not constitute proof of the guilt of the accused person with regard to the matters reported.

The court, finding it necessary, proceeded to hear the child in the council chamber, noting from the complainant's statements that she accused the defendant of acts of violence against her, mainly verbal, but rarely physical.

She recounted that she was never very close to her mother, that she blamed her for moving away from the family to go and stay at the countryside where she tended to the animals and did farming, neglecting her, her father and her brother.

During the hearing, the minor was unable to give the court any real, personal, reason for the rupture between her and her mother, always showing that she was affected by the angry outbursts of her mother, who had also assaulted her paternal grandmother, her sister, and was in a constant state of conflict with her father.

When questioned, the minor indicated that it bothers her to receive phone calls from her mother, that it bothers her when she meets her on the street or at the door to the apartment building, that she appreciates that she has nothing to talk to her mother about, that she is not really interested in her personal or school problems, but only behaves in this way to create the appearance that she cares about her daughter, she also claimed that she waits until she is 18 years old when she will be free of her mother's authority, hoping that from that moment on her mother will no longer seek her out or harass her with her presence.

The minor also recounted an event for which no evidence was submitted in the case file, which occurred on the morning of 08.10.2018, when she was walking to school and the defendant got in her way. The minor related that, wishing to completely ignore her mother, she put headphones in her ears

and listened to music, ignoring her presence, until she began to bully her, demanding her attention. The minor recounted how she escaped from the defendant's hands through the intervention of a witness who could not be brought to the trial for a hearing.

In the court's view, formed by listening to the child and analysing her non-verbal and paraverbal communication, the applicant is and has been strongly influenced over the years by her father as to the image she should have of her mother and her role in her life.

This is perhaps also the reason why the minor cannot conceive of needing her mother in any way, completely denying her access to everything that concerns her, excluding her from her life and aggressively rejecting her.

In the context of the conduct and feelings that the minor does not deny and does not hide from showing to her mother, her desperate attitude to at least catch her on the street for a few moments, to see her and even to rough her up (if such gestures could have been proven) to make her give her a moment of attention is understandable, as one can also understand why she follows her to school or other public places, or telephones her from unknown numbers, in order to induce her at least by mistake or inopportunistically to allow her a few moments to see her or hear her voice.

Having regard to the existing relationships in the family and the causes which led to the destruction of those ties, the court finds in the present case that there is no evidence to support the claims. This is because for the event of 08.10.2018, the witness did not appear for hearing and no documents from the police files were submitted to shed light, and with regard to the other multiple complaints and grievances directed against the defendant, the court could not find any action taken by the authorities, except for the counselling program at the General Directorate for Social Assistance and Child Protection.

In the light of the evidence, the court considers that in this case there is a possible hypothesis of alienation of the minor from her mother, to which the response is a series of desperate actions by the alienated parent, aimed at recovering the child's affection as much as possible, if not at least to see her as much as she can.

In this context, legal provision shall apply.

In law, according to Article 3 para. (1) of Law No 217/2003 on preventing and combating domestic violence: Article 4 a)-c), Article 23(1).

Having analysed the content of the application for a protection order, the Court finds that it cannot, by the facts set out, lead to a decision to grant it.

In support of this, the court considers, first of all, that there is no concrete evidence of any **episode of physical or verbal violence of such** a nature as to endanger the life, integrity or liberty of the person, the applicant relying on the general conduct of the last period, in which the defendant has sought to be involved in aspects of life which concern her, while she is rejected and ignored.

However, the Court states that the charges against the defendant relate mainly to violence of a psychological nature (anxiety and stress induced by the intrusion into her private life).

The court also takes into account the fact that the child's attitude and the image she has of her mother is more than enough to make her feel uncomfortable, to annoy her and to wish she had no contact with her mother.

In the given situation, it is obvious that the mere sight of the mother on the street is an irritating factor for the minor, let alone her attempts to approach her.

In this context, it is clear to the court that most of the defendant's actions, whatever they may be, take on a completely different tone because of the applicant's perceptions and feelings, because of the pre-existing feelings of rejection which the child has developed, which were also fuelled by others and through which she perceives the mother, finding everything she does annoying, aggressive and suffocating.

It further states that the court's analysis in the protection order procedure involves not only the analysis of the facts incriminated by the law (in this case insults, offensive expressions and threats), but also the verification of the existence of the essential condition required by law in this procedure, namely the existence of an **imminent danger for the life, physical or mental integrity of the petitioner**.

On that occasion, the court states that the appropriateness of issuing a protection order is subject to a twofold analysis; on the one hand, whether the alleged conduct of the defendant is a real and imminent danger to the life, physical and psychological integrity of its victims and, on the other hand, whether her attitude has violated the fundamental rights of the complainant (and/or her relatives), causing suffering of a psychological or any other nature.

It should also be borne in mind that the applicant does not allege a state of fear, but rather a state of stress, suffocation, which she does not prove by any means of evidence, repeating and insisting on the fact that she has nothing to talk to her mother about, that she cannot mend the relationship, that

she wants to have no more contact with her and to turn 18 in order to become an adult and escape completely from her mother's care.

However, the characteristics, the essence of the protection order is that the state of fear is felt by the applicant who makes the request, who appreciates the existence of an imminent danger to his or her own person, a condition which is not met in this case.

In conclusion, the court cannot hold the state of fear and the existence of danger to the applicant's life and health and, consequently, it cannot admit the protection order either, considering that the relationship between mother and daughter is extremely seriously damaged, but nevertheless, the mother's actions do not fall within the scope of those intended to lead to the taking of protective measures.

The court, noting the state of the relationship between mother and daughter and considering it essential to restore their relationship, draws the attention of the applicant's legal representative to the fact that he is directly responsible and obliged to make every effort and invest time for the welfare of his child, to explain to her the importance of accepting her mother and involving her in their life.

The court stresses that coming of age is not an excuse for removing the child from the family and parents and that parental support is essential in many aspects of life at any age, not just until the child reaches the age of majority and reinforces the idea that **parental support means the involvement of both parents in the child's life.**

As this judgment is addressed to all the parties, the court points out to the defendant that, if it is at least partly true, her attitude and the way in which she is trying to take part in her daughter's life is perhaps not the most appropriate method.

It draws the attention of both parents to the emotional and affective fragility that characterises children in families where parents are separated, suggesting that they should detach themselves from their marital conflict when dealing with children and advises them not to try to draw children to their side under any circumstances.

The court points out that through these behaviours they create suffering that they cannot perceive and especially that, no matter how hard they try, they will never be able to fill the void they have created by alienating the child from the other parent, the child only displaying **a false sense of fulfilment,**

being troubled deep down by frustration, negative feelings towards the other parent and suffering because of its absence.

For the reasons set out above, the court shall dismiss the order as unfounded.

DELIVERED JUDGEMENT:

The court dismisses the application for a protection order against the applicant C.A.M., assisted by her legal representative, C.M., residing in XXX, and the defendant C.M., residing in XXX, as unfounded.

NOTE

The applicant appealed against the judgment dismissing the application for a protection order.

(Bucharest Court, First Civil Section, excerpt of decision)

By the judgment under appeal, the court dismissed the application for a protection order against the applicant C.A.M., assisted by her legal representative C.M., residing in District 1, Bucharest, and the defendant C.M., residing in District 1, Bucharest, as unfounded.

In fact, she pointed out that her parents divorced and after the divorce, she was entrusted to her father for her upbringing and education as she wished.

She mentioned that the main reason for the divorce, which also led to her estrangement from the defendant, her mother, was the fact that she left her and the family marital home, having moved to the house in XXX, where she started to take care of animals and to grow a vegetable garden.

The complainant indicated that she did not want to live in the countryside and for this reason, being abandoned by her mother, she moved closer to her father, with whom she lives in the apartment of her paternal grandparents, while her mother remained in the family home, in the neighbouring apartment.

After the start of the divorce proceedings, the complainant claimed that her mother had completely changed her behaviour, becoming aggressive with various family members, obsessed with her daughter's situation, seeking her out, following her around all the time, including at school, bothering her with phone calls and messages and going out into the street just to see her and keep an eye on her, so after numerous complaints to the police, the applicant decided to lodge this order.

The most recent event that made her want to be completely separated from her mother happened on 08.10.2018, in the morning, when the minor was leaving for school, at which time her mother followed her, caught up with her and stopped her on the way to talk to her. The minor refused to talk to her mother and asked her to leave her alone; she even called her father to ask him to take her to school to get rid of her.

However, the complainant said the defendant lost her temper and grabbed her by the hair, forcing her to get on the bus and not to return home. A shop assistant from a nearby shop who knew the family and their problems, intervened to help the minor, so that at some point the minor managed to free herself and go home, going from there with her father to the police to lodge a complaint and to court.

The complainant also reported that because of the situation in her family, she underwent psychological counselling to improve her relationship with her mother.

At the end of the action, the complainant was adamant that she needed to get away from her mother, to be left alone by her mother, that the defendant did not understand that she did not want to have any contact with her and that she could no longer tolerate the constant harassment.

Having analysed the case-file, the Court notes the following:

The applicant is the daughter of the defendant and the named C.M. and was born on 5.06.2001.

After the divorce, the minor was entrusted to the father until she reached the age of majority, and her residence was established at his home, at the address on St. XXX.

The Court notes that a series of documents consisting of complaints, referrals, responses from competent authorities and investigation reports were submitted to the case file, which show that during 2017-2018 the named C.M., as legal representative of the complainant minor, often complained about the manner in which the defendant tried to contact her daughter, to communicate effectively with her and to take an interest in her upbringing.

Analysing the subject matter of the complaints, the court finds that they essentially concern the failure to respect the minor's privacy, her capacity to

decide for herself, persistently contacting her and exercising an excessive close supervision, which have triggered a feeling of intrusion into her privacy.

However, the court cannot fail to observe that only the complaints to the authorities have been filed, without their response to any investigations carried out, without showing whether measures were taken against the defendant as a result of the complaints, considering that the mere complaint does not constitute proof of the guilt of the accused person with regard to the matters reported.

The court, finding it necessary, proceeded to hear the child in the council chamber, noting from the complainant's statements that she accused the defendant of acts of violence against her, mainly verbal, but rarely physical.

She recounted that she was never very close to her mother, that she blamed her for moving away from the family to go and stay at the countryside where she tended to the animals and took care of the farm, neglecting her, her father and her brother.

During the hearing, the minor was unable to give the court any real, personal, reason for the rupture between her and her mother, always showing that she was affected by the angry outbursts of her mother, who had also assaulted her paternal grandmother, her sister, and was in a constant state of conflict with her father.

When questioned, the minor indicated that it bothers her to receive phone calls from her mother, that it bothers her when she meets her on the street or at the door to the apartment building, that she appreciates that she has nothing to talk to her mother about, that she is not really interested in her personal or school problems, but only behaves in this way to create the appearance that she cares about her daughter, she also claimed that she waits until she is 18 years old when she will be free of her mother's authority, hoping that from that moment on, her mother will no longer seek her out or harass her with her presence.

The minor also recounted an event for which no evidence was submitted in the case file, which occurred on the morning of 08.10.2018, when she was walking to school and the defendant got in her way. The minor related that, wishing to completely ignore her mother, she put headphones in her ears and listened to music, ignoring her presence, until she began to bully her, demanding her attention. The minor recounted how she escaped from the defendant's hands through the intervention of a witness who could not be brought to the trial for a hearing.

In the court's view, formed after hearing the child and analysing her non-verbal and paraverbal communication, the applicant is and has been strongly influenced over the years by her father as to the image she should have of her mother and her role in her life.

This is perhaps also the reason why the minor cannot conceive of needing her mother in any way, completely denying her access to everything that concerns her, excluding her from her life and aggressively rejecting her.

In the context of the conduct and feelings that the minor does not deny and does not hide from showing to her mother, her desperate attitude to at least catch her on the street for a few moments, to see her and even to rough her up (if such gestures could have been proven) to make her give her a moment of attention is understandable, as one can also understand why she follows her to school or other public places, or telephones her from unknown numbers, to determine her at least accidentally or unexpectedly to offer her a few moments to see her or hear her voice.

Having regard to the existing relationships in the family and the causes, which led to the destruction of those ties, the court finds in the present case that there is no evidence to support the claims. This is because for the event of 08.10.2018, the witness did not appear for hearing and no documents from the police files were submitted to shed light, and with regard to the other multiple complaints and grievances directed against the defendant, the court could not find any action taken by the authorities, except for the counselling program at the General Directorate for Social Assistance and Child Protection.

In the light of the evidence, the court considers that in this case there is a possible hypothesis of alienation of the minor from her mother, to which the response is a series of desperate actions by the alienated parent, aimed at recovering the child's affection as much as possible, if not at least to see her as much as she can.

Having analysed the content of the application for a protection order, the Court finds that it cannot, by the facts set out, lead to a decision to grant it.

In support of this, the court considers, first of all, that there is no concrete evidence of any **episode of physical or verbal violence** of such a nature as to endanger the life, integrity or liberty of the person, the applicant relying on the general conduct of the last period, in which the defendant has sought to be involved in aspects of life which concern her, while she is rejected and ignored.

However, the Court states that the charges against the defendant relate mainly to violence of a psychological nature (anxiety and stress induced by the intrusion into her private life).

The court also takes into account the fact that the child's attitude and the image she has of her mother is more than enough to make her feel uncomfortable, to annoy her and to wish she had no contact with her mother.

In the given situation, it is obvious that the mere sight of the mother on the street is an irritating factor for the minor, let alone her attempts to approach her.

In this context, it is clear to the court that most of the defendant's actions, regardless of what they are, acquire a completely different note due to the perception and experiences of the plaintiff, due to the pre-existing feelings of rejection that the minor has developed and which continue to be fuelled by others, these being the lens through which she perceives her mother, considering whatever she does as annoying, aggressive and suffocating.

It further states that the court's analysis in the protection order procedure involves not only the analysis of the facts incriminated by the law (in this case insults, offensive expressions and threats), but also the verification of the existence of the essential condition required by law in this procedure, namely the existence of an **imminent danger for the life, physical or mental integrity of the petitioner.**

On that occasion, the court states that the appropriateness of issuing a protection order is subject to a twofold analysis; on the one hand, whether the alleged conduct of the defendant is a real and imminent danger to the life, physical and psychological integrity of its victims and, on the other hand, whether her attitude has violated the fundamental rights of the complainant (and/or her relatives), causing suffering of a psychological or any other nature.

It should also be borne in mind that the applicant does not allege a state of fear, but rather a state of stress, suffocation, which she does not prove by any means of evidence, repeating and insisting on the fact that she has nothing to talk to her mother about, that she cannot mend the relationship, that she wants to have no more contact with her and to turn 18 in order to become an adult and escape completely from her mother's care.

However, the characteristics, the essence of the protection order is that the state of fear is felt by the applicant who makes the request, who appreciates the existence of an imminent danger to his or her own person, a condition that is not met in this case.

In conclusion, the court cannot hold the state of fear and the existence of danger to the applicant's life and health and, consequently, it cannot admit the protection order either, considering that the relationship between mother and daughter is extremely seriously damaged, but nevertheless, the mother's actions do not fall within the scope of those intended to lead to the taking of protective measures.

The court, noting the state of the relationship between mother and daughter and considering it essential to restore their relationship, draws the attention of the applicant's legal representative to the fact that he is directly responsible and obliged to make every effort and invest time for the welfare of his child, to explain to her the importance of accepting her mother and involving her in their life.

The court stresses that coming of age is not an excuse for removing the child from the family and parents and that parental support is essential in many aspects of life at any age, not just until the child reaches the age of majority, and reinforces the idea that **parental support means the involvement of both parents in the child's life.**

As this judgment is addressed to all the parties, the court points out to the defendant that, if it is at least partly true, her attitude and the way in which she is trying to take part in her daughter's life is perhaps not the most appropriate method.

It draws the attention of both parents to the emotional and affective fragility that characterises children in families where parents are separated, suggesting that they should detach themselves from their marital conflict when dealing with children and advises them not to try to draw children to their side under any circumstances.

The court points out that through these behaviours they create suffering that they cannot perceive and especially that, no matter how hard they try, they will never be able to fill the void they have created by alienating the child from the other parent, the child only displaying **a false sense of fulfilment**, being troubled deep down by frustration, negative feelings towards the other parent and suffering because of its absence.

For the reasons set out above, the court shall dismiss the order of protection as unfounded.

The Court considers that an assessment of the defendant's violent conduct in terms of the complainant's personal injury cannot solely rely on the applicant's submissions.

The assessment of violence must be based on direct evidence, which has not been adduced in this case. The mere state of tension cannot lead to the conclusion that the applicant was hit by the defendant or that the minor's psychological and intellectual development was impaired in the absence of evidence of material facts unequivocally establishing those consequences. A contrary interpretation would show an attitude on the part of the court characterised by biases about the person of the defendant-respondent.

A decisive element in the procedure for issuing a protection order is also **the existence of an imminent and persistent danger**. In that regard, the fact that the complainant has changed her place of work is irrelevant, since that situation had been exhausted nine months before the action was brought to the first court.

However, what the applicant is asking the court to do is to oblige the defendant-mother, with whom she has a strained relationship, for reasons that go beyond the procedural framework, to stop contacting her in order to give her "some space", as the appellant-claimant's lawyer put it before the Court of Appeal.

However, given the **age of the applicant, which requires special attention from both parties**, and her attitude, which, in the courtroom, until the case was called, was relaxed and cheerful in the presence of the defendant-mother, the court tends to believe that she does not understand the implications of such a procedure, **that she does not understand the role of the parents in her upbringing and education, a role which is based on a legal obligation on their part, which, if not fulfilled, may give rise to unpleasant legal consequences**.

Therefore, since there is no evidence of permanent harassment, psychological aggression towards the applicant and, in any event, no evidence of psychological violence, the Court cannot uphold the appeal as it is unfounded.

However, at the same time, it also draws the attention of the complainant's father to the fact that he should be attentive to the minor's actions and more selective in encouraging them, and that he must have the minor's best interests at heart, which does not lie in conflict with his own parents.

DELIVERED JUDGEMENT:

The Court dismisses the appeal filed by the defendant-appellant C.A.M. through legal representative C.M. residing in Bucharest, District 1, against

the civil judgment No. X/26.10.2018 delivered by the Bucharest District 1 Court, as unfounded.

Definitive.

NOTE

The victim was included in a counselling programme within the General Directorate for Social Assistance and Child Protection District 1. Following an interview of the victim-minor by a psychologist of the Directorate, it was found that she is affected by the conflict between the parents, which is why it was proposed to include the child in a psychological counselling program, in order to improve the mother-daughter relationship and awareness of the child's needs by both parents. In the meantime, the victim became of age, but did not resume her relationship with her mother, continuing to live with her father and brother. It was the father who took care of the children's upbringing and education, and the children's residence was established with the father.

Application for a protection order brought by a mother against her 16-year-old minor son, in respect of whom the applicant mother exercises exclusive parental authority

(Bucharest District 2 Court, excerpt of the judgement)

By a writ of summons registered with the Bucharest District 2 Court on 29.10.2018, under No. X/300/2018, the plaintiff B.C.I. summoned the defendant G.B.I., assisted by the legal guardian G.L.I., for a judgment to be delivered ordering the issuance of a protection order against the defendant ordering the temporary eviction of the defendant from her home, establishing the defendant's residence with his father, G.L.I., order the defendant to keep a specified minimum distance from the applicant, her home and her place of work, prohibit any contact, including by telephone, correspondence or any other means, with the applicant.

In the grounds of the action, she pointed out that she is the mother of the defendant and by civil judgment No. X/21.01.2016 delivered by the Bucharest District 3 Court in case No. X/301/2015, it was ordered that parental authority over the defendant be exercised exclusively and that the defendant's residence be established at her home. At the same time, she pointed out that for about 1 year the applicant has been in a cohabiting relationship, and the defendant does not accept this, has become very aggressive, insults her, destroys property, threatens her with death and has hit her cohabitant, and lately refuses to go to school, spends all night on the computer, and sleeps during the day. She said that the defendant used to steal money from her, lock her on the balcony or not allow her access to the apartment or from the apartment to the outside.

She revealed that the minor, although he is 16 years old, is 1.90 m tall and weighs almost 100 kg.

She said that she had applied to the General Directorate for Social Assistance and Child Protection District 2 for inclusion in a psychological counselling programme to resolve the defendant's behavioural problems, and in April, she filed a criminal complaint against him for physical and verbal violence against her.

Further, she indicated that she has no control over the defendant, having to call the police to enter the home when she returns from work.

She stated that on 18.08.2018, she was at home with her partner and the defendant, and the applicant went to the bathroom to take a shower, and later woke up at the Emergency Hospital St. Pantelimon. Her partner told her that he found her in the bathtub, asleep, with water running, that he could not wake her up and called the ambulance service.

Subsequently, following the tests carried out, two substances were identified, namely barbiturates and benzodiazepines, which produce drowsiness, drugs which the applicant indicated that she had never taken and did not know how she had ingested them that day. She indicated that on 19 August, she was also very tired, sleeping until the following afternoon, for which reason she was again taken to hospital, the same substances having again been identified by blood tests.

On 21.08.2018 she voluntarily presented herself at the Clinical Hospital of Psychiatry Prof. Dr. Al. Obregia, undergoing a psychological consultation to prove that she does not suffer from any mental illness, and on 28.08.2018 she underwent another psychiatric evaluation at the *Oana Nicolau Clinic*, the result being “clinically healthy, without psychiatric symptoms at the time of the evaluation; fit to carry out the shift work program”.

Finally, she indicated that she requested the court to change the minor’s place of residence, a request registered under No. X/300/2018 with the *Bucharest District 2 Court*.

Having analysed the evidence in the case, the Court notes the following:

In fact, the applicant is the mother of the defendant G.B.I., aged 16, and by civil judgment No. X/21.01.2016 delivered by the Bucharest District 3 Court in case No X/301/2015, it was ordered that parental authority over him be exercised exclusively by the mother and that the minor defendant’s residence be established at the applicant’s home.

From the testimony of witness Z.G.L., the court notes that there is a tense relationship between the parties, with the minor defendant addressing the applicant, his mother, in an insulting manner, describing conflict situations in which the applicant scolds the defendant for not cleaning and the defendant refuses to do so, the applicant also being dissatisfied with the fact that the defendant does not attend the school where he is enrolled, comes home late and spends time on the computer. The witness recounted two incidents in which the defendant did not allow the applicant and the witness, the

applicant's boyfriend, access to the home, and they had to spend the night at an acquaintance's house. Witness P.Ş.A. also indicated that he was aware from defendant G.B.I. that there was a strained relationship between him and the applicant, the minor feeling that he was wrongly accused of acts he had not committed. **In law**, as regards the procedural framework, in accordance with the provisions of Article 5 a) of Law No. 217/2003 on preventing and combating domestic violence, the parties, as mother and son, fall within the scope of the addressees circumscribed by the legal rule.

Article 23 of Law No 217/2003 on preventing and combating domestic violence, by regulating the "protection order", sought to create a way of protecting victims of domestic violence, which can be used as a matter of urgency to immediately remove exposure to aggressive treatment, by providing for the following conditions of admissibility: 1) a finding that an act of violence has been committed, 2) the act of violence must be such as to endanger the life, integrity or liberty of the victim, and 3) the act must be one of domestic violence, in the sense that it is committed by a member of the victim's family, in the broad meaning given by Article 5 of Law No. 217/2003.

In deciding the case, the court shall also have regard to the provisions of Article 3 of Law No 217/2003, according to which domestic violence is any intentional act or inaction, except in self-defence or defence, manifested physically or verbally, committed by a family member against another member of the same family, which causes or is likely to cause physical, mental, sexual, emotional or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty and preventing women from exercising their fundamental rights and freedoms, and Article 4 of the same act, which regulates the forms in which domestic violence may manifest itself.

At the same time, in view of the specific nature of the present case, in which the defendant is a minor of 16 years of age for whom the applicant mother exercises sole parental authority, the court shall examine whether the conditions set out above have been met in the light of the duties owed to the minor defendant arising from the applicant's status as a parent.

Thus, according to Article 36 para. (2) of Law No. 272/2004, "*the exercise of parental rights and the fulfilment of parental obligations must take into account the best interest of the child and ensure the child's material and spiritual well-being, in particular by caring for the child, by maintaining personal relations with the child, by ensuring the child's upbringing, education and maintenance, as well as by representing the child legally and managing*

the child's assets", and according to Article 37 of the same law, "the child has the right to be brought up in conditions that allow his or her physical, mental, spiritual, moral and social development". To this end, parents are obliged: a) to supervise the child; b) to cooperate with the child and respect his or her privacy, private life and dignity; c) to inform the child of all acts and facts that may affect him or her and to take the child's opinion into account; d) to take all necessary measures for the realisation of the rights of their child; e) to cooperate with natural persons and legal entities that exercise powers in the field of the child's care, education and training".

The court points out that the reactions of teenage children to their parents' divorce may include feelings of anger, expressed in verbal hostility, hitting or destroying property, unjustified absences from school, which are the very behaviours described by the applicant and which, in her opinion, would justify the issuing of a protection order against the minor defendant. The court also takes into account the fact that, at this stage of development, conflicts with one or both parents may be of a permanent nature, but it is the duty of the parent to understand the needs of his or her adolescent child in order to optimise the relationship between them.

The Court holds that the defendant has manifested acts of verbal and psychological violence within the meaning of Article 4 a) and b) of Law No 217/2003, but the acts found, namely the use of abusive words against the applicant and restricting her access to the home cannot be interpreted as acts of violence such as to endanger the applicant's life, physical or mental integrity or freedom.

With regard to the events of 18 and 19 August 2018, the court finds that there is no evidence in the case that the minor defendant had any involvement in the ingestion of the sleeping substances by the applicant. At the same time, for the issuance of an order to commence criminal proceedings in respect of the offences of unlawful deprivation of liberty, destruction, threat and assault or other violence, following the criminal complaint lodged by the applicant against the defendant, there is no proof that the defendant exercised the acts of violence claimed.

The issuing of a protection order against the minor child aged 16 is far from resolving the dysfunctions existing between the applicant mother and the minor defendant, as this relationship could be improved, on the one hand, by the participation of both of them in psychological counselling sessions and, on the other hand, by the involvement of the other parent, with whom the minor has a good relationship, in alleviating these misunderstandings.

In the light of the content of the evidence, the court finds that the defendant has engaged in inappropriate conduct in the form of verbal and psychological violence within the meaning of Articles 3 and 4 a) and b) of Law No. 217/2003, but the facts proved are not such as to lead to a restriction of the defendant's rights and freedoms in the sense requested by the applicant, and the measures requested to be ordered appear to the court to be disproportionate to the seriousness of the situation in the case, having regard also to the obligations arising from the applicant's status as mother to the minor defendant.

In the light of the above considerations, it is found that, although the evidence in the case clearly reveals the conflict situation existing between the parties, the existing differences do not constitute serious indications and, therefore, cannot justify, by themselves, the existence of a state of serious and imminent danger that would require the emergency intervention of the authorities and justify the special and exceptional measures provided by Law No 217/2003, with the consequence of restricting the defendant's rights and freedom, and therefore dismiss the application for a protection order as unfounded.

Pursuant to Article 2 para. (3) and (4) with reference to Article 2 para. (1) point 1 letter m) of the Protocol on the establishment of lawyers' fees for the provision of legal aid services concluded between the Ministry of Justice and the National Union of Romanian Bar Associations the court orders the payment from the funds of the Ministry of Justice to the account of the Bucharest Bar Association of the fee of 260 lei for the lawyer appointed for the defendant G.B.I.

On the basis of Article 49 para. (1) last sentence of GEO No. 80/2013, the court orders the applicant to pay to the State the sum of 260 lei as legal costs representing the fee of the special curator, N.A.Ş., appointed for the defendant G.B.I.

Based on Article 96 para. (2) of Law No. 272/2004, in view of the facts of the case, the subject matter of the application, which seeks the eviction of the minor from the home of the applicant mother, the court shall order the General Directorate for Social Assistance and Child Protection District 2 to monitor the situation of the minor G.B.I.

DELIVERED JUDGEMENT:

The Court dismisses the application for a protection order brought by the applicant B.C.I., residing in District 2, Bucharest, against the defendant

G.B.I., residing in District 2, Bucharest, through special guardian N.A.Ş., residing in District 3, Bucharest, and the defendant G.L.I., residing in District 3, Bucharest, as unfounded.

The Court orders the referral to the General Directorate for Social Assistance and Child Protection District 2 to monitor the situation of the minor G.B.I.

With right of appeal within 3 days of delivery. The application for appeal is lodged with the Bucharest District 2 Court.

NOTE

The applicant appealed against the judgment of the court of first instance, but subsequently abandoned the appeal. She left the home because she did not feel safe, especially as the minor had started to frequent his father more and more often and, under his influence, according to the applicant, was constantly harassing her. It should be noted that the son, although a minor, was very physically developed and the mother had reason to fear him.

The applicant also applied for a change of residence of the minor with the father and for the exercise of parental authority by the father alone, which she subsequently withdrew.

**Application by daughter against father dismissed as unfounded.
The applicant has not provided evidence of the defendant's acts**

(Bucharest District 2 Court, excerpt of the judgement)

The case is pending before the Court of the civil proceedings for the issuance of a protection order brought by the Public Prosecutor's Office of the Bucharest District 2 Court, concerning the applicant S.E.I., against the defendant S.Ş.

At the roll-call made at the sitting in the Council Chamber, the applicant appeared in person and was assisted by a lawyer with power of attorney on file, page 20, and the defendant appeared in person and was assisted by *an ex officio* lawyer of his own motion, who lodged a power of attorney on file.

The summons procedure has been duly completed.

The case was reported by the court clerk, who explained the subject matter of the case, the stage reached in the proceedings and how the summons procedure had been completed.

The court shall proceed to identify the parties by their identity cards.

Pursuant to Article 131 para. (1) Code of Civil Procedure, noting that this is the first trial term at which the parties are legally summoned before the first instance, questions the jurisdiction of the Bucharest District 2 Court in the resolution of the case and the estimation of the duration of the trial.

The parties, through their defence counsel and the representative of the Public Prosecutor's Office, having taken the floor in turn, state that the Bucharest District 2 Court has general, material and territorial jurisdiction to settle the present case, estimating the duration of the judicial inquiry at one trial term.

The Court finds that the Bucharest District 2 Court has general, material and territorial jurisdiction to settle the case pursuant to Article 25 of Law No 217/2003 and pursuant to Article 238 of the Code of Civil Procedure estimates the duration of the investigation of the trial at one trial term.

The Court gives the floor to the debate of the evidence.

The applicant's lawyer requests the production of documents, the hearing of the parties and of the applicant's 10-year-old daughter. He also states that she is the only witness present at the events.

The complainant states that the girl was present when the incident occurred on 15.10.2019.

The defendant's *ex officio* defence counsel states that he objects to hearing the witness because she is of a young age. He also informs the court that the applicant lives in the house with her husband and assumes that he could give a statement. She asked to hear the defendant's other sons, who had left home precisely because of the applicant.

The representative of the Public Prosecutor's Office asks for evidence in writing and deems it necessary to hear the parties. He also requests that the hearing of the minor be extended.

The applicant's lawyer insists on hearing the minor and points out that the girl will not be traumatised by the hearing.

The Court, deliberating on the evidence, pursuant to Articles 255 and 258 of the Civil Procedure Code, grants the parties leave to produce the documents on file, considering that they are useful for the resolution of the case. Rejects the testimonial evidence requested by the defendant as not being useful for the resolution of the case and adjourns the hearing of the minor after the hearing of the parties.

The Court shall hear the applicant.

The applicant states that she filed the complaint because she has been fighting the same battle with the defendant for years. The daughter is hers alone, as she has been divorced from her husband since 2013, but remarried two months ago. The house has three rooms, and she lives with the defendant. She states that she uses the bathroom and the kitchen/shared rooms together with the defendant. She states that in the five years since her mother died, things have escalated. On 15.10 she came home from work, picked up the child from after-school and when she got home the defendant told her not to touch the stove as it was his, told her she had no right to the house, told her to leave, spat at her, bullied her and threw a chair at her. She mentions that she has a different address on her identity card, as the defendant has refused to change her address¹ and always tells her that she should not live with him. She says that he threatened to kill her and that when he threw the chair at her, if he had not hit her, he would have hit the girl. She also states that for the last five years the three of them have been living together, as her brother has been abroad for a long time. She says that the defendant has various addictions,

¹ If a person does not provide proof of domicile by means of the property deed, a written declaration of the host, natural or legal person, on the residence in the premises is required

uses drugs and plays slot machines. Her sister has been living in her mother's parental home in D.V. Street for 5-6 years, but for the last five years she has been working with her husband in Cyprus. She says she has not spoken to her sister for at least 3 years, because she has offended her and the child.

When questioned by the representative of the Public Prosecutor's Office, the complainant states that she has always lived with her father.

The court shall hear the defendant.

The defendant shows that he is old and has been working from 7 a.m. to 7 p.m. for over 41-42 years. He has not spent more than two years at home in the last five years as he goes on business trips all over the world. He says he sponsored his daughter with money, paid for the afterschool, food, everything in the house. On 15.10, when he saw the stove full of water, which was brand new and on which he had paid 20 million lei, he made a remark and the complainant came out with the phone and said, "let me do you (...) in the mouth". He points out that her daughter is just like her. She is a very attached child, and it is normal, but she has to tell the truth. He mentions that he raised that child but does not understand what has happened since the complainant got married. He says that the complainant has only been married for about three months and that her husband is „always with her child“.

When questioned by the court, the applicant states that she and her current husband have been together for a year and a half and got married three months ago.

The defendant indicates that he can bring references from work to be checked whether he is violent. He has been home for a month and a half. He shows that it is not fair for a little girl who is not his (referring to his son-in-law) to stay with him like that, it is not right. He states that in five years he does not know if he has spent eight months at home, as he is away in India, Russia etc.

The defendant's *ex officio* defence counsel points out that the defendant has been to Russia, America and is returning to the country, but during his time at home, he cannot live in peace.

The defendant states that he can show his passport.

When questioned by the applicant's lawyer, the defendant states that he does not consume alcoholic beverages, as he is ill. "He drinks a beer, but that does not mean he is drunk". He also states that he has a homemade sword that he made when he was young, but it has no purpose. He points out that he pays

the utility bills, and while he is away, it is normal for the complainant to pay them. He mentions that the complainant wants him to disappear at all costs and that is why he behaves like this. He says that he lent the complainant a lot of money and that he raised the girl.

When questioned by the court, the plaintiff states that she has no loan from him and that the only money was given to her account by the defendant's brother S.I., but she personally never gave him anything. She tells the court that she has been working since she was 16 years old and asks for checks to be made to see her income.

The defendant points out that the complainant has not stayed employed for more than six months.

The applicant states that she is a bartender/waitress and has also worked as a nurse in a hospital.

The Court questions the need to hear the witness proposed by the applicant, namely her daughter.

The representative of the Public Prosecutor's Office considers it necessary to hear the applicant's daughter.

The court orders the courtroom to be cleared for the hearing of the minor.

The minor introduces herself and states that her name is H.A., she is 10 years old and lives with her grandfather and mother. Her relationship with her parents is very good. Her mother and her husband pick her up from school. She has a good relationship with her biological father, he visits her but does not stay with her. She doesn't get along very well with her grandfather; she doesn't think he loves her or that he cares for her. On 15.10 when she came home from school with her mother, her grandfather spoke rude words to her mother and even threw a chair at her. He did not hit her, he hit her mother. Apart from this incident, he got angry several other times. She says that her grandfather goes to India for work and comes every two weeks. She points out that her grandfather does not ask her about her homework or how she did at school. When she comes home from school, she greets him and goes upstairs as she lives upstairs, otherwise her grandfather passes by. In the kitchen, she does not sit at the table with her grandfather as they are separated and the fridge is not shared. Grandpa keeps his fridge in one corner and they keep theirs in another corner. He usually argues with his mother about the bathroom, the stove, when they meet in the same place. He thinks they argue like that because they do not get along.

When questioned by the representative of the Public Prosecutor's Office about her mother's behaviour towards the defendant, the minor indicates that they walk past each other in the house, they do not talk.

When questioned by the defendant's *ex officio* public defender, the minor states that they met once in the bathroom (her mother and grandfather) and her grandfather told her mother to go outside and touched her face with the toilet paper roll.

When questioned by the defendant, the minor states that he often took her to school paid for her after-school and bought her anything she wanted.

Since there are no further requests to be made, no objections to be raised and no evidence to be adduced, the Court declares the investigation closed and gives the parties the floor to make their submissions on the merits.

The complainant's lawyer requests that the application be granted and that the protection order be issued pursuant to Article 23(1) of Law No 213/2017. He requests the temporary eviction of the defendant from the family home in street..., District 2, the keeping of a distance of 100 m from the victim and from the school ... in street, District 2, and the prohibition of any contact, including by telephone, with both the applicant and her daughter.

The defendant's *ex officio* defence counsel advises the court that the minor has been well prepared in this respect. He considers that the application is unfounded, as the conditions for the issuing of the protection order are not met. He states that there was a misunderstanding between the parties, there are no medical records in the case file, and the statements in the case file show that she was not hit in any way.

Therefore, the claim is unfounded and the defendant is the owner there, he is her father.

In reply, the complainant's defence counsel states that the police found that there was no assault or visible blows, but the complainant told the police that she was hit with the chair. He states that the girl became reluctant when she argued with the defendant, but this is normal, as she has been involved in arguments for years. As regards the touching of the girl by the applicant's husband, she states that this is false.

The defendant's defence counsel states that it is normal to be afraid, as he is her grandfather.

The representative of the Public Prosecutor's Office requests the issuance of the protection order, given that the evidence and the hearing of the minor indicate a state of conflict between the parties.

Pursuant to the provisions of Article 394 of the Civil Procedure Code, the court declares the proceedings on the merits of the case closed and remits the case to be decided, with a decision to be made available to the parties through the court registry.

In deciding the case, the Court finds as follows:

By a writ of summons registered with the Bucharest District 2 Court on 17.10.2019, the Public Prosecutor's Office of the Bucharest District 2 Court, on behalf of the complainant S.E.I., summoned the defendant S.Ş., for a judgment to be issued ordering the issuance of a protection order against the defendant ordering him to keep a minimum distance from the victim, from her residence, place of work, prohibiting any contact, including by telephone, by correspondence or in any other way with the applicant, as well as from her daughter. In the grounds of the action, she stated that on 15.10.2019, at around 18:00, the aggressor S.Ş., being at the address in ... street where he lives together with her daughter, her husband and their daughter, addressed insulting expressions and words to her and hit her with a chair in the left leg area. He also threatened to kill her if she did not leave the house.

As evidence, she requested the admission of written evidence and testimonial evidence consisting in the hearing of the 10-year-old minor, her daughter, H.A.

The application is exempt from stamp duty under Article 26(2) b) of Law No 217/2003.

The defendant did not make a statement of defence but appeared before the court to support his procedural position.

Pursuant to Article 27 para. (3) of Law No 217/2003, the defendant was provided with legal assistance, being assisted by a public defender, C.A.L., according to the delegation for free legal assistance.

In the case, evidence was given in the form of written documents and testimonial evidence consisting in the hearing of the minor H.A.

Having analysed the evidence in the case, the Court notes the following:

In fact, the parties are father-daughter. She lives in District 2, Bucharest, together with the defendant-father, her daughter and her husband.

The Court notes that since the death of the applicant's mother some five years ago, she has been malicious and indifferent towards her father, who still lives in the parental home.

From the parties' interrogatories, administered *ex officio* by the court, it appears that the applicant has not maintained any kind of relationship with her sister for more than 3 years because, as the applicant replied, "we have nothing to say to each other". She does not have a good relationship with her brother either and does not maintain constant emotional ties.

In connection with the incident of 15.10.2019, the court indeed holds that the attitude adopted by the defendant is neither appropriate nor legal. However, the court observes that the existing state of conflict between the parties has been going on for a long time, almost every time it is limited to inappropriate, offensive words from the defendant, against the background of provocation caused by the behaviour, malice and indifference of the complainant towards the defendant and the household chores.

The court shall eliminate the statement of witness H.A. and shall not give it probative value in favour of the complainant, noting her lack of impartiality and direction in the answers that were to come in response to the court's questions, previously asked by the complainant.

The Court notes that the defendant is mostly out of the country on business and does not bother the 'complainant's family with his presence.

The court observes that the complainant is trying to seize an opportunity to initiate the eviction of the defendant from the parental home, with the consequence that she would remain with only her husband and daughter in the house. Moreover, her attitude, as perceived by the court at the trial, is cold, indifferent towards the defendant and somewhat unintentionally revealed her desire to get rid of her father from the home.

In law, according to Article 23 of Law No 217/2003: *(1) A person whose life, physical or mental integrity or freedom is endangered by an act of violence on the part of a family member may apply to the court to issue a protection order, in order to remove the state of danger, by which one or more of the following measures – obligations or prohibitions – may be provisionally ordered: a) temporary eviction of the aggressor from the family home, regardless of whether the aggressor is the owner of the property; b) reintegration of the victim and, where appropriate, the children, into the family home; c) limitation of the aggressor's right of use to only part of the common home when it can be shared in such a way that the aggressor does*

not come into contact with the victim; c¹) accommodation/placement of the victim, with his/her consent, and, where appropriate, of the children, in an assistance centre among those referred to in Article 17; d) order the offender to keep a specified minimum distance from the victim, from the members of the victim's family, as defined in accordance with Article 5, or from the protected person's residence, place of work or educational establishment; e) prohibiting the offender from going to certain localities or specific areas which the protected person frequents or visits regularly; e¹) requiring the offender to wear an electronic surveillance system at all times; f) prohibiting any contact, including by telephone, correspondence or any other means, with the victim; g) requiring the offender to hand over to the police the weapons he possesses; h) entrusting minor children or establishing their residence.

(1^{A1}) The measure provided for in paragraph 1 shall be adopted by the Commission. (1) (e)¹ shall be ordered if the following conditions are met: a) one of the measures referred to in paragraph 1 has been ordered. (b) where the offender has been ordered to keep a minimum distance from the victim and, where appropriate, members of the victim's family, the protected persons agree to wear an electronic surveillance system enabling compliance with the offender's obligation to be verified.

(2) By the same judgment, the court may also order the perpetrator to pay rent and/or maintenance for the temporary accommodation where the victim, minor children or other family members live or are to live due to the impossibility of staying in the family home. (3) In addition to any of the measures ordered pursuant to para. (1), the court may also order the offender to undergo psychological counselling, psychotherapy and may recommend voluntary admission or, where appropriate, request non-voluntary admission, under the terms of the Law on Mental Health and Protection of Persons with Mental Disorders No 487/2002, republished. If the offender is a user of psychoactive substances, the court may order, with his consent, his integration into a programme of assistance for drug users, in accordance with Article 22 of Law No 143/2000 on preventing and combating illicit drug trafficking and consumption, republished, with subsequent amendments and additions. (4) By the same decision, the court may order a measure to control compliance with the protection order and to prevent its violation, such as: a) ordering the aggressor to report periodically, at a time set by the court according to the circumstances, to the police station competent to supervise compliance with the protection order; b) ordering the aggressor to give information to the police body about the new home, if the order has ordered his eviction from

the family home; c) regular and/or spontaneous checks on the aggressor's whereabouts.

In view of the fact that the complainant is not in a state of fear justified by the defendant's violent conduct, the court considers that protective measures are not necessary, since the applicant's life, physical or mental integrity or freedom are not endangered.

In the case in question, the complainant has not provided evidence that the defendant has committed acts of violence against her or a member of her family such as to endanger her life, integrity or freedom of movement. It is true that the defendant has an aggressive attitude, but it is often generated by the complainant's provocation, malice and indifference to the existence and life of her father, whom she does not want around or in her home.

Consequently, the Court shall dismiss the action as unfounded.

DELIVERED JUDGEMENT:

Rejects the request for the issuance of a protection order, formulated by the Public Prosecutor's Office of the Bucharest District 2 Court regarding the applicant S.E.I., identified with Personal Numeric Code residing in Bucharest, District 2, against the defendant S.Ş., identified with Personal Numeric Code, residing in Bucharest, District 2, as unfounded.

Orders the applicant to pay to the State the sum of 500 lei, consisting of the fees of the *ex officio* lawyer appointed for the defendant, which were advanced from the funds of the Ministry of Justice.

With right of appeal within 3 days of delivery. The appeal must be lodged with the Bucharest District 2 Court, under penalty of nullity.

NOTE

The applicant has not appealed against the decision dismissing the application for a protection order. She continues to live in the property owned by her father.

APPEAL AGAINST THE PROTECTION ORDER

Appeal against provisional protection order dismissed as unfounded

(Bucharest District 2 Court, excerpt of the judgement)

The case is pending in the civil proceedings concerning the protection order – appeal lodged by the appellant I.T., in contradiction with the respondent I.A.C. and the respondent police authority of Station 8 Bucharest.

The defence counsel for the applicant, Av. N.A., states that he can understand the reasoning for which the Romanian Police grants the protection order with great ease. He has lodged this appeal to show exactly what happened that evening. It is very difficult to prove that he did not do something, when someone shows that he did, it is very hard to believe that such a violent person would insist that his wife go to a psychologist to regain her balance, which has happened, the respondent is currently seeing a psychologist. In the criminal complaint made by the respondent, there are small inaccuracies in that it mentions that the complainant was intoxicated. Nor does the police officer note that he was intoxicated, and as far as the respondent is concerned, it is stated that she has no visible injuries and does not require medical attention. If he had had an uncontrollable fit of rage and had banged the respondent's head against the wall, there would have been traces.

Having the word on the background of the case, the respondent's lawyer, G.C., requests the court to dismiss the appeal. From a procedural point of view, the provisional protection order was drawn up in accordance with the law and the rules of application of the law. The emergency number 112 was called, a case of domestic violence was reported, the police team went to the house and there they found the traces of violence, i.e. the damage in the house and what happened in the building. Then the respondent was invited to the police station, so she did not immediately go to the police for the applicant. The incident was stopped by the intervention of the neighbours who kept insisting at the door as they could hear shouting and banging. When the respondent opened the door and the neighbours entered the apartment, the applicant took his papers, the key to the apartment and left. If the protection

order had been issued in violation of the law, the court can check whether the legal provisions were complied with, whether the danger was imminent and whether the protection order should be issued.

The defendant's counsel, G.C., states that the protection order issued by the police has been confirmed by the prosecutor and the court has been asked to issue the protection order for a period of 6 months. He submitted evidence in the case file according to which, following the respondent's referral, criminal proceedings for domestic violence were initiated. On the evening of 31.01.2020, there is evidence that the respondent's life was endangered. Immediately after the incident, the police officer did not notice visible signs of violence, as there is a duration of several days before the blows become visible; now they are visible, the bruises have turned purple. In the submitted photo there are pills thrown on the floor and in the distance, in the doorway, one of the children. He threw the syrups on the floor and then took the clothes out of the closet to clean up. It is very good that the respondent is going to see a psychologist, as she has been living in hell and has not told anyone what happened to her. No court costs.

The Court, deliberating on the appeal against the provisional protection order, holds as follows:

By application filed with the Bucharest District 2 Court on 03.02.2020 and registered under number X, the contestant I.T. filed, in contradiction with the respondent I.A.C., an appeal against the provisional protection order No. X, issued on 31.20.2020 by the Police of District 2 Bucharest – Police Station 8, requesting the annulment of the order.

In the grounds of his appeal, the applicant stated in essence that he has been married to the applicant I.A.C. since 10.01.2016, after a relationship of 6 years. After the birth of the first child, a premature birth, his wife experienced a state of distress, which became worse after the birth of the second child and against the background of a relationship with her own mother during her childhood. The first state of conflict occurred in the afternoon of 28.04.2018, when they were sitting at the table in the courtyard of the country house with the children, she suddenly got up and shouted that he had beaten her, that he had strangled her, and that she had asked his mother "how she had raised such a bastard". The second strong crisis was on July 3, 2019, around 7 p.m., when, also unexpectedly, she started screaming at the children, saying that she was

not going on holiday to Antalya, that she had changed her mind, that she did not want to fly on a plane and that she wouldn't leave the children either.

He also showed in essence that on 31.01.2020 out of the blue, she started to scream and throw things from the house on the floor, and when asked "what happened" followed by a request to calm down, as she was shouting, she threw a mug, the shards of which were scattered in the kitchen, where she was with their son. Immediately there was a knock on the door, and a neighbour from the flat below came and asked the respondent what was wrong. In the presence of the neighbour, the wife shouted at her husband to get out of her house. While screaming, she said she had been beaten, which was not true, told him to get out of the house. The applicant took his papers and walked out the door and went straight to the Police Station 8 to report this, as he was extremely worried about the minor children who are 2 (two) and 4 (four) years old respectively, due to this condition of his wife and the fact that they were left with only her in the house. He came to the police station visibly disturbed by his wife's condition, her extremely hostile behaviour, the insults she had used in front of the children and the fact that they were left alone with her.

As a result, he voluntarily went to the Police Station 8 to report these facts and to prevent a possible escalation of these conflicts, which is clear from the registration number of his complaint, which is prior to the number of the provisional protection order.

He stated that the appeal is well founded in view of the provisions of Article 2¹ of Law No 174/2018.

In essence, the conditions laid down by the law for a protection order are not met, since it has not been shown in any way, with any evidence, that the applicant and the children have been physically and mentally harmed, that violence has been exercised, not just an act, and that the social danger has been caused by this act of violence. In law, the appellant invoked the provisions of Article 22 index 8 of Law No. 174/2018.

Having analysed the evidence in the case, by reference to the relevant legal provisions, the Court finds as follows:

In fact, on 31.01.2020, the police officers of Section 8 Bucharest issued a provisional protection order No. X regarding the victim I.A.C. and the aggressor I.T. from 31.01.2020, 10:00 p.m. until 05.02.2020, 10:00 p.m.

The order stated that I.T. had some differences with his wife I.A.C. due to some disagreements regarding the children's upbringing, and following

a fit of rage he became verbally aggressive, after which he started throwing things around the house, throwing a porcelain mug in his wife's direction, after which he hit her against the front door of the apartment, slapped her several times on the face and squeezed her neck.

According to Article 5 (1) of Order No. 146/2578/2018 on how police officers handle cases of domestic violence, when intervening to determine the existence of an imminent risk that life, physical integrity or freedom of persons may be endangered by an act of domestic violence, police officers assess the factual situation based on the risk assessment form.

According to the provisions of Article 7(1) of the same Order, if the conclusions resulting from the risk assessment form indicate an imminent risk that the life, physical integrity or freedom of the victim may be endangered, the police officer who drew up the risk assessment form shall issue the provisional protection order, based on the model set out in Annex 3.

The provisions of the Methodology for the use of the risk assessment form (Annex No. 2 to the above-mentioned Order), point 6, state that, in order to be classified as "there is an imminent risk", at least 2 of the answers to Chapter I – questions 1-7 of the risk assessment form must be YES; or if there were not at least 2 YES answers to Chapter I – questions 1-7 of the risk assessment form, but at least 6 YES answers to Chapter I – questions 8-21 of the risk assessment form.

Point 10 states that, regardless of the nature of the officer's findings in Chapter II – points 1-5 of the risk assessment form, if the interpretation of the victim's answers indicates that the risk has been assessed as "there is an imminent risk", the officer shall issue an interim protection order, in accordance with the law.

Also, paragraph 11, sentence I states that the protection order **shall not be issued** only if the victim expressly objects. Opposition must be explicit and unequivocal and is materialised by the victim's signature on the risk assessment form, after having been informed in advance of the risks to which he/she is exposed.

The provisional protection order is a measure to support and protect the family. Its purpose is to remove the state of danger to a person's life, physical or mental integrity or liberty as a result of an act of violence by a family member for a fixed period of 5 days, according to Article 22⁴ (1) of Law No. 217/2003.

The Court takes into account that the restriction of a person's rights, even for a period of 5 days, must be of a justified nature, based on elementary evidence, leading to the conclusion that the measure taken is justified.

The issuance of a protection order, even a provisional one, requires a balance to be maintained between the rights of the person against whom the violence is alleged and the rights of the person on whom the violence has been inflicted.

A first condition that must be met in order for a protection order to be issued is that a family member has committed acts of violence against another member of the same family. A second condition is the existence of a danger to the life, physical or mental integrity or liberty of a person, which must be removed by issuing the protection order.

The Court finds that the applicant (the contestant) and the respondent (the defendant) in the present case are family members within the meaning of Article 5 of Law No. 217/2003, as they are spouses.

In the present case, the court holds that the police body issuing the protection order had sufficient evidence to take provisional measures for a period of five days, the conditions laid down by law for its issue having been met.

The violence, as defined by Law No. 217/2003, results from the respondent's allegations before the court as well as from the statements she gave to the police, which essentially state that her husband, the complainant, has exercised acts of violence against her on several occasions, and on 31.01.2020 he exercised acts of physical and verbal violence and threw several objects, throwing two mugs and a full beer bottle in her direction.

The respondent's allegations are corroborated by the police report, which states that there are shards of glass on the floor in the kitchen of the home, the photos attached to the file showing shards of glass on the floor, and the photos submitted by the respondent showing that she has injuries caused by violence.

The appellant denied that he had used violence against the respondent.

The Court holds that, having regard to the duration for which the protection order is issued, the purpose of the order to reduce an imminent risk that the life, physical integrity or liberty of a person may be endangered by an act of domestic violence, the circumstances in which the acts of violence were committed, namely in the parties' home, where there are usually no other persons present who can directly perceive the circumstances of the case, the issue of the provisional order is not conditional on the production of extensive

evidence in relation to its provisional nature and urgency, the conditions for its issue being expressly laid down by law.

The Court therefore finds that the conditions laid down in Article 22¹ of Law No 217/2003, Article 22³ concerning the form of the provisional protection order and Article 22¹⁰ in relation to Article 5(5) of Law No. 217/2003, as well as Article 7 par. (1) and of Order No. 146/2578/2018 and Annex No. 2 to the Order (regulating the Methodology for the use of the risk assessment form) are met. The conclusions resulting from the risk assessment form indicate the existence of an imminent risk that the life, physical integrity or freedom of the victim may be endangered and by reference to the duration of the restriction of the rights of the contestant, the evidence is sufficient to confirm the factual situation and justify the issuance of the Order, which is why the court shall reject the appeal.

DELIVERED JUDGEMENT:

[The Court] Dismisses the appeal lodged by the appellant I.T. against the provisional protection order issued by Police Station 8 in Bucharest, as unfounded.

Definitive.

NOTE

The applicant lodged an appeal against the provisional protection order, which was rejected as unfounded. Subsequently, the prosecutor's application for a protection order was granted. The protection order was issued for a maximum duration. The aggressor appealed against the decision to issue the protection order, which was rejected. Two months after the protection order was issued, the aggressor sought its revocation, but the application was rejected, including the appeal (the judgments are reproduced below). During the state of emergency, the aggressor filed an application for a presidential order for the establishment of a programme of personal contact with minors; the application was rejected, as was the appeal. In the course of 3 months, the aggressor generated 6 lawsuits against his wife, which caused her psychological discomfort, as she was alone with two minor children (aged 2 and 4) in the midst of the Covid-19 pandemic, with no financial support from her husband. After losing all the lawsuits against his wife, except for the divorce, which was suspended, the abuser tried to reconcile by sending messages regretting his actions. The victim refused any reconciliation with the abuser.

APPLICATION FOR REVOCATION OF THE PROTECTION ORDER

**Application for revocation of the protection order on the grounds
of compliance with the measures provided by the order.
Application rejected for lack of assessment of risk of re-offending,
to be carried out by a probation service**

(Bucharest District 2 Court, excerpt of the judgement)

By a writ of summons registered in these courts on 27.03.2020 under No. X, the appellant I.T., in contradiction with the respondent I.A.C., requested the court to revoke the protection order imposed by judgment No. X/06.02.2020 delivered by the Bucharest District 2 Court in case X, considering that the reasons for its issuance have ceased.

In the factual grounds of the application, the appellant stated that he immediately complied with the protection order, respecting the measures ordered by the court's judgment and, at the same time, he underwent psychological counselling and does not wish to return to his wife's home, given that he has also brought divorce proceedings, which is why he would not be a danger to the respondent. He also stated that he wished to have contact with his children (minors), as the court had not established a way for him to have contact with them without being in breach of the order.

In support of the application, documents were submitted.

The application is exempt from stamp duty under Article 26(2) of Law No 217/2003.

Legally summoned with a copy of the action, the respondent filed a statement of defence requesting the court to dismiss the application for revocation of the protection order as unfounded. In the reasoning, the respondent stated that granting the application would facilitate the return of the applicant to the marital home, from which he had been evicted, thus endangering her life and integrity, by depriving her of the protection instrument. The respondent also stated that the applicant had not provided evidence that he was undergoing psychological counselling.

In support, the respondent requested that evidence be provided in writing.

In assessing the application for revocation of the protection order in the light of the evidence adduced and the relevant legal provisions, the Court finds as follows:

In fact, by civil judgment No. X/06.02.2020 issued by the Bucharest District 2 Court by civil decision No. 234/A/24.02.2020, the claim brought by the plaintiff I.A.C. against I.T. was admitted, and a protection order was issued against the latter, ordering, on a provisional basis, for a period of 6 months from the date of issue, the following measures: temporary eviction of the defendant from the building located in Bucharest, District 2; order the defendant to keep a minimum distance of 200 metres from the applicant I.A.C. and from the applicant's home located in Bucharest, District 2; the defendant was prohibited from any contact, including by telephone, by correspondence or in any other way, including by Facebook, Messenger, WhatsApp etc., with the applicant.

At the same time, by the same decision, the residence of the minors I.T.L. and I.V.R. was established at their mother's home, for the whole period of the protection order. However, the claim for an order that the defendant keep a specified minimum distance from the parties' children, the minors I.T.L., born on 2 February 2016, and I.V.F., born on 2 February 2018, was dismissed as unfounded.

In addition, under the provisions of Article 23(3) of Law No 217/2003, the defendant was ordered to undergo psychological counselling for the duration of the protection order, an activity to be carried out by the Directorate of Social Assistance and Child Protection District 5 Bucharest.

As a preliminary point, the Court points out that in the procedure for the revocation of a protection order it is no longer possible to go back on what was previously decided, with the force of *res judicata*, when the order whose revocation is sought was issued.

The Court holds that that procedure was laid down by the legislature not as an appeal against the decision to issue a protection order, but as a remedy to restore the rights of the former aggressor who has shown good conduct, so that it may be justifiably assumed that he is no longer a danger to the victim of the violence or her family.

In the present case, however, the court finds that the conditions laid down by law for the revocation of the protection order are not met, holding, in the light of the seriousness of the acts of violence committed by the applicant

against the respondent, that he continues to represent a danger to the victim I.A.C.

Thus, on the one hand, it is not conclusive that the applicant has complied with the measures imposed by the protection order during those two months, that being a state of normality which leads to the conclusion that the order is effective.

On the other hand, the claimant did not submit proof of the frequency of the psychological counselling sessions, ordered by civil judgment No. X/06.02.2020 issued by Bucharest District 2 Court in case No. X/300/2020, namely a record of thereof and the conclusion of the psychologist in this regard.

The Court finds that the condition laid down in by Article 34 c) of Law No 217/2003 on preventing and combating domestic violence is not met either, since the applicant has not submitted an assessment of the risk of recidivism carried out by a probation service, indicating a sufficiently low risk and the fact that the perpetrator no longer poses a real danger to the victim of domestic violence or to his family, as defined under Article 5.

Accordingly, the court finds that the conditions laid down in Article 34 of Law No 217/2003 are not cumulatively fulfilled, so that the application for revocation of the protection order issued is unfounded and shall be rejected as such.

As regards the manner in which the applicant exercises his right to have personal contact with the minors, the court holds that he may take the minors by communicating with the respondent's parents or the applicant's mother with the respondent, there being no impediment in this respect, since the court issued the protection order only in relation to the victim I.A.C., dismissing the head of claim concerning the order that the defendant keep a specified minimum distance from the parties' children, the minors I.T.L., born on 2 February 2016, and I.V.F., born on 2 February 2018, as unfounded, so that the father may maintain personal ties with the two minors, and that he is not restricted in any way in that right.

Thus, regarding the personal ties with the minors, the father was not allowed to contact them, and on the other hand, there is a case before the court concerning a presidential order – establishing personal ties, but this is not a reason for revoking the order.

Given that protection orders are issued in particular to prevent further acts of domestic violence, Article 2 c) of Law No 217/2003, the court finds

that the measure ordered has not fulfilled its purpose to date and that there is still a risk of further domestic violence.

For the foregoing reasons, pursuant to Article 34 of Law No. 217/2003, the court shall dismiss as unfounded the application for revocation of the protection order issued by civil judgment No. X/06.02.2020 delivered by Bucharest District 2 Court in case No. X/300/2020, final by dismissal of the appeal by Bucharest Court by civil decision No. X/24.02.2020.

DELIVERED JUDGEMENT:

The Court dismisses as unfounded the application for revocation of the protection order, issued by civil judgment No. X/06.02.2020, delivered by the District 2 Court of Bucharest in case No. X/300/2020, filed by the applicant I.T. against the respondent I.A.C.

With the right to appeal, within 3 days of the decision, to be filed with Bucharest District 2 Court.

NOTE

The applicant appealed against the judgment.

(Bucharest Tribunal, Fifth Civil Section, excerpt of decision)

The Tribunal is hearing the civil appeal filed by the appellant-claimant I.T. against civil judgment No. X/31.03.2020 delivered by Bucharest District 2 Court in case no. X/300/2020 against the defendants I.A.C., Police Station 8, Police Station 18, concerning the protection order.

The appellant stated that he had complied with the protection order, had undergone psychological counselling, had brought the divorce proceedings in case No. X/300/2020 and had filed the presidential order for the establishment of a visiting schedule for the children.

The appellant also indicated that he was very concerned about the situation of the minors in the current context and that his role as an active father was hampered by the poor way in which the protection order was formulated.

The appellant stated that the respondent and the maternal grandparents had agreed to maintain personal contact between the appellant and the minors, and that in order to mediate this tie to contact the maternal grandfather, he stated that he was not a danger to his wife, and that any contact on his part would be a violation of the provisions of the protection order.

Assessing the judgment under appeal in the light of the grounds of appeal put forward, the General Court holds as follows:

According to provisions of Article 34 of Law No 217/2003 on preventing and combating domestic violence:

(1) A person against whom a measure has been ordered by a protection order for the maximum duration may request the revocation of the order or the replacement of the measure ordered.

(2) Revocation may be ordered if all the following conditions are met:

a. The offender has complied with the prohibitions or obligations imposed;

b. The offender has undergone psychological counselling, psychotherapy, detoxification treatment or any other form of counselling or therapy that has been established for him or her, or that has been recommended to him or her, or has complied with safety measures, if such measures have been taken in accordance with the law;

c. If there is a competency-based assessment of the risk of re-offending by a probation service which indicates a sufficiently low risk and that the perpetrator no longer poses a real danger to the victim of domestic violence or to the victim's family, as defined under Article 5.

(3) The application for revocation shall be dealt with by summoning the parties and the police unit, which enforced the protection order whose revocation is sought. The participation of the public prosecutor is mandatory.

The court dismissed the applicant's application, holding that he had not provided evidence of the frequency of psychological counselling sessions and that no assessment of the risk of recidivism carried out by a probation service in accordance with its powers had been submitted in the file.

From the reports provided by the General Directorate of Social Assistance and Child Protection of the Local Council of District 5 and filed in the appeal file, it appears that the schedule of social and psychological counselling sessions was fully respected.

However, the appellant did not submit a competency-based risk assessment of recidivism by a probation service in the record, nor did he refer to this in his appeal.

At the trial before the Court of Appeal, he pointed out that this document could only be obtained at the request of the court, according to the information provided to him by phone by the competent authority. However, the appellant

did not, in the evidence adduced on appeal, request the court to obtain that document, although he would have had that possibility.

Since not all the documents required by law for the revocation of the protection order have been submitted in the file, the applicant's application cannot be granted.

As the court held, as regards the manner in which the appellant exercises his right to have personal contact with the minors, the court holds that he may take the minors by communicating with the respondent's parents or the respondent to that effect, and there is no impediment in that regard, since the court issued the protection order only in relation to the victim I.A.C., so that the father may maintain personal contact with the two minors, and that he is not restricted in any way in that right.

In this regard, there is also the address No. X/24.03.2020 issued by the General Directorate of Social Assistance and Child Protection of the Local Council of District 2, from which it appears that the respondent and the maternal grandparents have indicated the godfather of the children as the person to take the children from the mother and hand them over to the appellant.

In the light of the above, the Tribunal, pursuant to Article 480 of the Code of Civil Procedure, dismisses the appeal as unfounded.

DELIVERED JUDGEMENT

The Tribunal dismisses the civil appeal filed by the appellant plaintiff I.T. against the civil judgment No. X/31.03.2020 delivered by Bucharest District 2 Court, in case No. X/300/2020, against I.A.C., as unfounded.

Application for revocation of protection order dismissed for lack of assessment of risk of recidivism. The court considers that the state of danger for victims of violence persists

(Bucharest District 5 Court, excerpt of the judgement)

By application filed at Bucharest District 5 Court on 09.07.2020, A.A., against the defendant A.L.M., requested the court to order the revocation of the protection order issued for a maximum period of 6 months by Civil Judgment No. X/29.04.2020 issued by Bucharest District 5 Court.

In the grounds of the application, the applicant stated that he had complied with all the prohibitions and obligations imposed by the protection order and had undergone a psychological counselling programme to try to better understand how he should change his behaviour. The applicant requested a review of the factual situation, which led to the issuing of the protection order. He indicated that he has no criminal record, is not known to have a criminal record, has a profession that requires respect and discipline, and considers that the protection order issued affects both his relationship with his children and his career by labelling him as a social danger at work.

The applicant requested a review of the factual situation, and that the protection order should be revoked because he misses his children and the alleged acts of violence do not exist as provided for by the legislation in force and the applicant's dignity has been affected. In that regard, he pointed out that after 22 years of marriage he did not deserve such treatment, as he was not a violent and vindictive person, and the protection order issued had affected his military career, for which he had worked very hard for 30 years.

In law, the provisions of Article 34 of Law No 217/2003, Decision No 50/2020 of the High Court of Cassation and Justice (panel for Settlement of legal matters) were invoked.

In support of his application, the applicant requested the submission of documents, which were attached, and of witness evidence.

On 14.07.2020, the respondent filed a statement of defence, requesting the dismissal of the application for revocation of the protection order as unfounded.

In the statement of the grounds of the statement of defence, the defendant stated that by the application for revocation of the protection order, the plaintiff criticizes the civil judgment No. X/19.04.2020 delivered by Bucharest District

5 Court in case No. Y/302/2020, considering it inappropriate to reconsider the factual situation that led to the issuance of the protection order, since the application for revocation of the protection order cannot be considered criticism of the judgment by which the protection order was issued, as it can be amended/dismissed only on appeal.

At the same time, the defendant submitted that compliance with the protection order up to that point could not be regarded as a ground for revoking the protection order, since it is the essence of the order that it must be complied with immediately and for the entire period for which it was issued.

The defendant considered that the conditions laid down by law for the revocation of the protection order were not met in the case, and that, in the light of the seriousness of the violence committed by the applicant against the defendant and her two children, he continued to represent a danger to the victims. At the same time, the defendant considered that the assessment and counselling report did not show that the applicant was no longer a danger to his wife and children.

The defendant requested that the Court finds that the condition laid down in Article 34 c) of Law No. 217/2003 is not satisfied, since the applicant has not submitted an assessment of the risk of recidivism carried out by a probation service in accordance with its powers, and the provisions of Decision No 50/2020 of the High Court of Cassation and Justice are not applicable to the case, since a criminal complaint was lodged against the applicant on 27 April 2020 by both the defendant and the parties' daughter.

In law, the provisions of Article 205 of the Code of Civil Procedure were relied on.

In support of his claim, he requested the submission of written evidence, which was attached, as well as audio evidence.

At the hearing on 15.07.2020, the court granted both parties the right to produce written evidence pursuant to Article 258 para. (1) of the Code of Civil Procedure, in connection with Article 255 para. (1) Code of Civil Procedure.

At the hearing on 15.07.2020, the Court reserved its decision on the merits of the case.

Having analysed the evidence in the case, the Court notes the following:

By civil judgment No. X/29.04.2020 delivered by Bucharest District 5 Court in case No. Y/302/2020, the applicant A.L.M.'s request for a protection order against the defendant A.A. was admitted, ordering the temporary

eviction of the defendant – for the duration of the protection order – from the home located in Bucharest, District 5, ordering the defendant to keep a minimum distance of 200 metres from the applicant and from the children A.K.A. and A.R.A., from the applicant’s living in Bucharest, District 5, from the applicant’s workplace located in Bucharest, District 5 and from the children’s educational facilities. The defendant was also prohibited from any contact, including by telephone, correspondence or any other means, with the applicant and her two children.

In order to pronounce this judgment, the court held that the parties are married, that there are disagreements between the parties due to the difficulty of living together and other issues related to the financial contribution to the household expenses and that on 26.04.2020, at around 07:00, on the basis of pre-existing discussions, the defendant, being in the family home, physically, verbally and mentally assaulted her, threatening her with violence, which created a state of fear, the facts occurred in the presence of the parties’ two children. The parties’ daughter told the police officers of the psychologically aggressive nature of the defendant, who seeks to impose his will and control over everything concerning the family, sometimes, in order to achieve this, depriving his children of financial support. The parties’ daughter, who witnessed the parents’ relationship over the years, said that the defendant uses threats of violence against all family members to get his way. The court also held that the applicant claimed that she was pushed by the defendant with his body intentionally during the discussion on 26.04.2020 and because of the push she lost her balance and fell down. The fact that the plaintiff fell was directly established by the daughter of the parties but was denied by the defendant. The court also dismissed as false the plaintiff’s contention as to his allegedly balanced conduct by reference to the plaintiff’s own allegations that he had physically abused his daughter by putting his hands around her neck in the context of another family dispute, and that on 26.04.2020 he had gone to his wife’s workplace to complain to management about her conduct, the defendant’s real intention being to coerce the plaintiff to behave the way he wanted.

In that context, the court held that the defendant had engaged in abusive conduct, in which he had attempted to subordinate the will of his wife and two children to his own will and his own aims, and in the event of refusal had resorted to physical and verbal violence and threats of violence or of such a nature as to cause the persons concerned a state of fear. As a result, the court

found, first, that the defendant had committed acts of violence listed in Article 3 of Law No. 217/2003 and, second, that the applicant's fear of harm from the defendant was real and such as to constitute a form of psychological coercion falling within the scope of Law No. 217/2003 on preventing and combating domestic violence.

The court also held that children who witness domestic violence are also victims, even if they do not personally file a complaint, based on the provisions of Article 5 (2) of Law No. 217/2013.

On the merits of the case, as the factual situation had been established, the court found, first, the existence of multiple forms of violence exercised by the defendant against his wife and children – insults and threats, including verbal and psychological violence, and the creation of a state of fear – justified, in the plaintiffs' view – that the defendant would resort to acts of violence against them. What is essential in situations similar to the present one is the commission of repeated acts of threatening harm – physical or psychological – towards members of his family, which the victims are unable to resist, and which is likely to induce in them a reasonable fear, in their estimation that they are in imminent danger. However, the context of the conflict in which the acts against the defendant's family members occurred requires them to have limited contact with the defendant for a period of time in order to avoid the generation and escalation of a new conflict.

The court also notes that the defendant has appealed against civil judgment No. X/29.04.2020, which was resolved by decision No. A/24.06.2020 of the Bucharest Court, Fifth Civil Section, which dismissed the appeal as unfounded. In the reasoning of the decision, it was held that the appeal was not reasoned in time, so that the court of appeal ruled, on the merits, only on the basis of the arguments raised at first instance, as provided for in Article 476. (2) of the Code of Civil Procedure.

Analysing the evidence adduced in the case at first instance and on appeal, the judicial review court found that the physical and mental integrity of the respondent-claimant and the parties' daughters had been endangered by the physical, verbal and psychological violence of the appellant-defendant, within the meaning of Article 4 a), b) and c) of Law 217/2013, and in order to remove this immediate state of danger, it was necessary to issue a protection order, ordering, on a provisional basis, the special protection measures provided for in Article 23 para. (1) a), d) and f) of Law No 217/2003, especially as the measures are to be ordered for a limited period of six months

and are not such as to affect the parental rights of the defendant-appellant, who has other legal remedies available to him to protect those rights, and the possibility of applying at any time for revocation of that protection order or replacement of the measures, if the conditions laid down in Article 34 para (2) of Law No 217/2003 are met.

With regards to the application for revocation of the protection order, the court notes that the legal provisions establishing the conditions under which a protection measure may be revoked must be taken into account in the analysis of the present application, provisions which are set out in Article 34 of Law No. 217/2003:

“(1) A person against whom a measure has been ordered by a protection order for the maximum duration may request the revocation of the order or the replacement of the measure ordered.

(2) Revocation may be ordered if all of the following conditions are met:

a) the offender has complied with the prohibitions or obligations imposed;

b) the offender has undergone psychological counselling, psychotherapy, detoxification treatment or any other form of counselling or therapy that has been established for him or recommended to him or has complied with safety measures, if such measures have been taken in accordance with the law;

c) if there is a competency-based assessment of the risk of re-offending by a probation service which indicates a sufficiently low risk and that the perpetrator no longer poses a real danger to the victim of domestic violence or to the victim’s family, as defined under Article 5.

(3) The application for revocation shall be dealt with by summoning the parties and the police unit, which enforced the protection order whose revocation is sought. The participation of the public prosecutor is mandatory.”

As regards the first condition, no evidence was submitted in the file to show that the applicant had not complied with the prohibitions imposed by this protection order.

With regards to the second condition for the revocation of a protection order, the Court finds that the applicant has not been obliged to undergo psychological counselling, psychotherapy, detoxification treatment or any other form of counselling or therapy.

As regards the third condition for the revocation of a protection order, the Court finds that it is not satisfied, in that there is no assessment of the risk of recidivism carried out by a probation service in accordance with its powers, which indicates a sufficiently low degree of risk, and that the perpetrator no

longer presents a real danger to the victim of domestic violence or her family. No such evidence was adduced in the case, and the burden of proof was on the applicant, in accordance with the provisions of Article 249 of the Code of Civil Procedure.

By Decision No. 50/2020 of the Court of Cassation and Justice of the European Communities, not containing grounds and not published in the Official Gazette, it was established that “where the person against whom the protection order has been issued is not involved in a criminal case, in order to order the revocation of the order, the probation service does not have to draw up an assessment of the risk of recidivism, pursuant to Article 34(2) c) In this case, the court shall make its own assessment of the existence of a real risk for the victim of domestic violence or her family from the person against whom the restraining order has been issued”.

The Court notes that a criminal complaint was lodged against the applicant in the present application by his wife and daughter on 27.04.2020, and that the case file No 000/P/2020 was opened. Given that the decision of the CCJ has not yet been reasoned, it is not possible to assess the meaning of the phrase “the person against whom the protection order was issued is not involved in a criminal case”. The Court also notes that this decision shall be binding from the moment of its publication in the Official Journal.

The Court, in the light of the findings in the civil judgment No X/29.04.2020 and the evidence in the present case, considers that there are not sufficient indications to consider that the reasons considered by the court that issued the protection order have disappeared, so that it can be considered that the state of danger for the victims of violence persists.

The Court notes that both the court of first instance and the court of appeal held that the applicant in the present application had engaged in abusive conduct, attempting to subordinate the will of his wife and the two children to his own will and his own aims, resorting, in the event of refusal, to physical and verbal violence and threats of violence or violence likely to cause the persons concerned a state of fear, which indicates a high risk that they will be repeated each time he finds himself in such a situation.

The Court also notes that the claims in the application are largely the applicant’s complaints about the judgment ordering the protective order against him, which are not the subject-matter of the present application. **The proceedings for revocation of the protection order do not have the legal nature of an appeal against the judgment ordering the protection order.**

The Court finds that the applicant's attachment to and concern for the children or the fact that the protection order issued affects his relationship with the children are of no legal relevance in the proceedings for revocation of the protection order.

Nor does the fact that the applicant attended psychological counselling sessions after the protection order was issued constitute a guarantee that his behaviour will change. It is gratifying that the applicant has agreed, on his own initiative, to consult a psychologist, but attendance at therapy sessions does not automatically lead the court to the conclusion that he has actually changed his behaviour and no longer represents a danger to the defendant and the parties' minor children. It appears from the psychological assessment and counselling report carried out by psychologist A.V. that the applicant attended four online psychological assessment/counselling sessions, but that report did not aim to assess the risk of relapse, but only to establish his personality profile and identify personal difficulties and ways of improving them, with the aim of better social integration.

In the light of those considerations of fact and law, the Court dismisses the applicant's action as unfounded.

DELIVERED JUDGEMENT:

The Court dismisses the application for revocation of the protection order made by the applicant A.A., personal identity code, residing in the county of Giurgiu, against the defendant A.L.M., personal numeric code, residing in Bucharest, District 5, as unfounded.

With right of appeal, to be lodged with the Bucharest District 5 Court, within 3 days of the decision.

NOTE

The abuser appealed against the decision dismissing the application to revoke the protection order. The aggressor submitted a psychological assessment report in the case, not to prove that he was aware of the seriousness of his acts, but rather to criticise the judgement by which the protection order was issued. Even before the court, the assailant did not refrain from accusing his wife (of being evil, diabolical and vindictive), stressing that the protection order issued would affect his career. Instead, the abuser tried to intimidate everyone around the victim so that she would have no support and would have to turn to him. The abuser cannot accept the idea that he has lost control

over his wife and two children (one adult and one minor) and generates a wave of complaints, accusations, lawsuits, etc. against them.

The assailant appealed against the decision rejecting the application for revocation of the protection order, which was dismissed as unfounded.

Before the court of appeal, the offender submitted new evidence, namely a response issued by the Bucharest Probation Service, which stated that the offender „is not in the records of the Bucharest Probation Service as an accused/convicted person, no risk assessment having been made“ and a characterization prepared by the psychologist of the General Directorate for Social Assistance and Child Protection District 5 Bucharest.

It should be noted that the perpetrator occupies a public, managerial position, which helped him to obtain this characterization within 5 days, while there was no time to be assessed and counselled psychologically; moreover, he did not meet any of the criteria for inclusion in the social services program provided by General Directorate for Social Assistance and Child Protection. He continued to harass his wife by making numerous complaints against her.

As the divorce proceedings are still in the administrative process, the victim and the minor child attend psychological counselling sessions to cope with the pressure exerted by the abuser.

PROTECTION ORDER ISSUED IN FAVOUR OF A REFUGEE

Protection order issued in favour of a refugee. The state of danger found by the court in the context of the death threats made by the defendant

(Timisoara Court, excerpt of the judgement)

By civil judgement of 13.02.2020 held by the Timișoara Court, it was found that, by a request registered on 20.12.2019, the Public Prosecutor's Office of the Timișoara Court, on behalf of the plaintiff E.K.M., on the basis of Article 22⁷ para. (6) of Law No. 217/2003, as amended and supplemented, requested the issuance of a protection order against the defendant L.S., ordering the defendant to keep a minimum distance of 300 m from the plaintiff and prohibiting any contact, including by telephone, correspondence or any other way, with the victim.

In the *de facto* statement of grounds of the claim, it was stated that the defendant is the applicant's husband and that, since November 2019, the defendant has been threatening her with physical violence in order to take revenge because she left him, leaving the Regional Centre for Procedures and Accommodation for Asylum Seekers Timișoara together with her current boyfriend, M.G.R.

As both parties are Iranian citizens, during the police checks, the interpreter B.A., an Iranian citizen who collaborates with General Inspectorate for Immigration Timiș in relations with citizens, was used to ensure verbal communication with the parties, as no authorised interpreter who understands the dialect spoken by the parties was identified, as stated in the request for the issuance of the protection order, formulated by the Public Prosecutor's Office of the Timișoara District Court on behalf of the applicant E.K.M.

The defendant did not submit a response.

At the request of the court, the Timiș Bar Association appointed a lawyer on behalf of the defendant, pursuant to Article 27(4) of Law No. 217/2003, republished, to provide legal assistance to the defendant in question, in the

person of Ms. P.L., lawyer, according to delegation No. 298/10.01.2020, issued by the Bar Association of Timiș (page 61 in the file).

Whereas, according to address No. 127/14.01.2020 of the Timiș Tribunal (page 62 of the case file), from the analysis of the register of authorized translators and interpreters existing at the level of the Timiș Tribunal, it was found that there is no person authorized as a Farsi translator, at the request of the parties' lawyers to appoint a Farsi translator in the case, to facilitate communication with the parties, given that they are not fluent in Romanian, being in the procedure for granting refugee status, and given also that both lawyers agreed to appoint a translator in the case, the court, seeing Article 225 (1) of the Code of Civil Procedure, in conjunction with Article 150 (4) of the Code of Civil Procedure., in the absence of an authorised Farsi translator and on the basis of the agreement of the parties' lawyers, appointed Mr. S.A.R., residing in Timișoara, who is on the list of translators used by the Timișoara Court in refugee cases (pages 84-85 in the file), to ensure communication in the case with the two parties, Iranian citizens who do not speak Romanian.

Having examined the documents and the file, the Court notes the following:

By the provisional protection order issued by the Urban Police Station 3, Timișoara on 19.12.2019, confirmed on 20.12.2019 by the Public Prosecutor's Office of the Timișoara District Court (pages 7-8), it was ordered, for a period of 5 days, i.e. until 23.12.2019, that the defendant keep a minimum distance of 300 meters from the applicant, on the grounds that the defendant threatened the applicant with physical violence.

In the statement given by the defendant through the interpreter B.A., the defendant stated that the parties are married, came to Romania in early 2018, being accommodated at the Regional Centre for Procedures and Accommodation for Asylum Seekers Timisoara, that there they stayed in the same room with M.G.R. for about 3 months, until 14.11.2019, when the claimant left the defendant and went with M.G.R. to a location unknown to the defendant. The defendant did not accept the fact that he had been left by the plaintiff, went to the plaintiff's place of work to find out where he could find her, and after the date of 14.11.2019, the defendant did not contact his wife or her partner in any way. The defendant states that he never physically assaulted the plaintiff, nor ever threatened her with anything (pages 14-15 in the file).

Witness M.G.R., heard at the trial on 12 February 2020, at the applicant's proposal, stated that he had met both parties in Romania, at the Open Centre for Asylum Seekers in Timișoara, that the applicant is the defendant's wife, that he had found that the parties argued very often, for various reasons, that the applicant had found a job in Timișoara, but the defendant was not working and was always asking her for money; that, since September 2019, the witness lived in the same room with the parties and other people, that the defendant, when arguing with the applicant, threatened her that he would kill her and her family, and also used insulting words to the applicant; that the applicant was afraid of the defendant, that from 14 November 2019 the applicant started a cohabitation relationship with the witness, that the defendant's threats against the applicant existed before and after the witness started the cohabitation relationship with her. The witness also stated that the applicant blocked the defendant's phone number, because the defendant continued to call her after the provisional protection order was issued, and then the defendant started sending the applicant death threatening messages on her mobile phone, both to her and to her family, that now the applicant is calmer because there is the provisional protection order, but she is afraid of the defendant; that the applicant had a job in Romania for about 2 years, but has not worked for 3 months; that she knows from a friend that **the defendant has been to the applicant's place of work several times and once went there with a knife and was looking for the complainant; that in Iranian society women suspected of concubinage are sentenced to death** (file 94).

According to the act No. 779343 series A/87, issued by the State Organization for Registration of Deeds and Properties of the Islamic Republic of Iran, Marriage Registration Office No. 15, Eslamshahr registration area (pages 74-83 in the file), translated from Persian into Romanian by certified translator S.L. (pages 71-73 in the file), it appears that the plaintiff is the wife of the defendant, the two having got married on 15.12.2009, their marriage being registered under No. 26785.

According to Article 1 of Law No. 217/2003, as amended and supplemented, preventing and combating domestic violence is part of the integrated policy of protection and support of the family and is an important public health issue.

According to Article 3 (1) of the aforementioned law, for the purposes of the law, domestic violence means any intentional act or inaction of physical, sexual, psychological, economic, social or spiritual violence occurring in the family or domestic environment or between spouses or ex-spouses, as well

as between current or former partners, regardless of whether the perpetrator lives or has lived with the victim.

According to Article 22⁷ (6) of Law No. 217/2003, as amended and supplemented, immediately after confirming the need to maintain the protection measures ordered by the police body by means of the provisional protection order, applying a resolution of an administrative nature on the original copy thereof, the public prosecutor shall submit the provisional protection order, accompanied by the documents on the basis of which it was issued and confirmed, to the competent court in whose territorial district it was issued, together with a request for the issuance of the protection order, drawn up in accordance with the provisions of Article 25 (3) (a) and Article 26 of the Law.

Article 22⁷ (7) of Law No. 217/2003, as amended and supplemented, provides that, in case of submission of the provisional protection order under para. (6), the initial duration for which it was ordered shall be extended, by operation of law, by the time necessary for the completion of the judicial procedure for issuing the protection order, with the aggressor being informed of this fact, and Article 22⁹ of the same law provides that the provisions of Chapter III¹ of the law, entitled „Provisional protection order“, shall be duly supplemented by those relating to the protection order, the latter being regulated in Chapter IV, from Article 23 to Article 35 of the law.

According to Article 23. (1) of Law No 217/2003, as amended and supplemented, the person whose life, physical or mental integrity or freedom is endangered by an act of violence by a family member may request the court to issue a protection order, in order to remove the state of danger, ordering, on a provisional basis, one or more of the measures (...).

Since the defendant is the applicant's husband, the court, in accordance with Article 5(b) of Law No 217/2003, as amended and supplemented, holds that the relationship between the parties is a family relationship within the meaning of that law, and the applicant may rely on the provisions of that law in order to obtain protective measures against the defendant.

Having regard to the testimony of the witness heard in the case, taking into account the fact that the defendant himself stated, during the police investigations, that he did not accept the thought that he had been left by his wife, the court believes that the defendant did indeed, out of jealousy, manifest acts of verbal and psychological violence towards the applicant, within the meaning of Article 5 of the law in question, addressing insulting words and even death threats to her, causing the applicant a state of fear. The

applicant's fear of the defendant is fully justified, especially as the difference in physical strength between the applicant, as a woman, and the defendant, a young and strong man, is obvious.

Therefore, taking into account also the fact that jealousy is often accompanied by acts of violence directed against the spouse, which has been shown to be the case here, the court, holds that the applicant, according to Article 5 (2) of Law No 217/2003, as amended and supplemented, is a victim of domestic violence, and that it is necessary to prevent further incidents which could endanger not only the applicant's mental but also her physical integrity and, last but not least, her very life, the main aim of Law No 217/2003, as amended and supplemented, being precisely to prevent domestic violence (Article 1). In the context of the above, it is particularly relevant that the defendant, who has verbally and psychologically abused the applicant, could, on the basis of jealousy, relapse into violence against the applicant in future situations, and even more seriously.

In light of the above, taking into account the preventive purpose for which the protection order was established by law, which means that it must not be expected that acts of violence will become daily and increasingly serious, but that immediate action must be taken to prevent them from occurring in the future, the court holds that, in order to protect the applicant, by ensuring physical and psychological comfort and removing any state of danger which might arise from the defendant, a protective order must be issued prohibiting the defendant from approaching the applicant at a distance of less than 300 metres and prohibiting him from any contact, including by telephone, correspondence or any other means, with the applicant.

The court shall therefore grant the application made and specified by the Public Prosecutor's Office of the Timișoara District Court, on behalf of the applicant E.K.M., and, on the basis of Article 23 (1) of Law No. 217/2003, as amended and supplemented, issuing a protection order prohibiting the defendant from approaching the applicant at a distance of less than 300 m from her and prohibiting her from any contact, including by telephone, correspondence or any other means, with the applicant, and, on the basis of Article 24 of Law No. 217/2003, as amended and supplemented, the court shall determine the duration of the measures to be ordered for a period of 6 months, starting from the date of issuance of the protection order.

Taking into account that Article 2 of Law No 25/2012, amending and supplementing Law No 217/2003, provides that „This law shall be supplemented by the corresponding provisions of the Criminal Code,

the Civil Code, the Code of Criminal Procedure and the Code of Civil Procedure“, taking into account also that, in the present case, under Article 27 (3) of Law No 217/2003, as amended and supplemented, the defendant was provided with compulsory legal assistance, through lawyer P.L., on the basis of the delegation for compulsory legal aid No 298/10.01.2020, issued by the Timiș Bar Association (page 61), and of Article 272 of the Code of Criminal Procedure, under which the necessary expenses for lawyers’ fees are covered by the sums advanced by the State or paid by the parties, the legal expenses advanced by the State being included separately, where appropriate, in the revenue and expenditure budget of the Ministry of Justice, the Public Prosecutor’s Office and other relevant ministries, and of Article 274(1) of the Code of Criminal Procedure, according to which, in the event of a conviction, the legal costs of the State’s defence counsel shall be borne by the State, the court, having regard also to Article 2(1)(o) in conjunction with Article 10 of the Protocol on the establishment of lawyers’ fees for the provision of legal aid services in criminal matters for the provision, within the framework of the system of public legal aid, of legal assistance and/or representation or extrajudicial assistance, as well as for the provision of legal assistance services concerning international access to justice in civil matters and international judicial cooperation in criminal matters, concluded between the Ministry of Justice and the National Union of Romanian Bar Associations, registered under No. 14511/14.02.2019 at the Ministry of Justice, with No. 351/C/14.02.2019 at the Public Ministry – Prosecutor’s Office of the High Court of Cassation and Justice, and with No. 37 AUT/14.02.2019 at the National Union of Bar Associations of Romania, according to which the minimum fee to be paid to the lawyer for providing legal assistance services before the courts in applications for the protection order is 500 lei, shall order the payment of 500 lei, representing the fee of the lawyer P.L., appointed *ex officio* for the defendant, from the Ministry of Justice to the Timiș Bar Association.

As regards the costs requested by the applicant, through her lawyer, at the hearing on the substance of the case, consisting of lawyers’ fees, *the court*, having regard to the fact that, under Article 451(1)(b) of the Code of Civil Procedure, the costs include, inter alia, lawyers’ fees, the court, in accordance with Article 453(1) of the Code of Civil Procedure, according to which the party that wins the case is entitled to claim from the other party the costs of the proceedings, shall order the defendant to pay the applicant the amount of 1200 lei, by way of court costs, representing the legal fees paid by the

applicant in accordance with invoice No. 250, series A, issued on 13.01.2020, by Law Firm A.F. (page 97 in the file), and receipt No. 83/15.01.2020, issued by Law Firm A.F. (page 96 in the file).

DELIVERED JUDGEMENT:

The Court admits the application brought by the Public Prosecutor's Office of the Timișoara District Court, on behalf of the plaintiff E.K.M., with personal numeric code..., residing in Timișoara, against the defendant L.S., with personal numeric code... residing at the Accommodation Centre for Asylum Seekers in Timișoara.

Prohibits the defendant from coming within 300 m of the applicant for a period of six months, starting on 13 February 2020.

Prohibits the defendant, for a period of 6 months, starting from 13.02.2020, from any contact, including by telephone, correspondence or any other means, with the applicant.

Violation of any of the measures ordered by this protection order shall constitute an offence under Article 32(2) of the Protection Order. (1) of Law No. 217/2003, as amended and supplemented.

Orders the payment of the amount of 500 lei, representing the fee of lawyer P.L., appointed *ex officio* for the defendant, from the Ministry of Justice fund to the Timiș Bar Association.

Orders the defendant to pay the applicant the amount of 1200 lei **as court costs**.

With the right to appeal within 3 days of the decision, the appeal request to be filed with the Timișoara Court.

Enforceable.

Delivered on 13.02.2020, with the decision being made available to the parties by the court registry.

NOTE

Application registered on 20.12.2019, first trial date 15.01.2020, case adjourned to 12.02.2020, due to difficulties in identifying an authorized interpreter who knows the dialect of the Persian language known to the parties. The defendant has not appealed against the judgment issuing the protection order.

The applicant is of Iranian origin and arrived in Romania illegally with her husband, seeking asylum, citing political problems of her husband. Their

applications were rejected – but in the meantime, the domestic violence that had marked their relationship since before they left Iran had escalated and the woman sought protection from the authorities.

After almost a year in the asylum procedure in Romania, the complainant turned to the services of NGOs in order to separate from her husband and obtain a protection order.

Asylum applications have been rejected. The abuser husband was returned to Iran, but the applicant applied for and was granted access to a new asylum procedure based on new evidence and elements – including the protection order. She was eventually granted refugee status in Romania, having pointed out the situation of women in Iran, the limitations of the fundamental rights she would face if she returned to her home country, the lack of protection for victims of domestic violence, the impossibility of divorcing without her husband's consent and the risk of falling victim to an honour killing.

In this case, too, the protection order changed a woman's destiny, practically restoring her right to life. This happened because a judge correctly perceived the danger this Muslim woman was in when she dared to leave her husband and start a new relationship with another man.

A COMPLEX CASE OF PHYSICAL AND PSYCHOLOGICAL VIOLENCE

Victim who benefited from 12 protection orders between 2013 and 2020. The beneficiary of the protection orders included the parties' son during the period when he was a minor. The perpetrator violated all protection orders by physically assaulting the victim in public places.

The last 4 protection orders are shown below

Ninth protection order issued for physical and psychological violence

(Bucharest District 3 Court, excerpt of the judgement)

By civil judgment of 18.04.2018 delivered by the *Bucharest District 3 Court*, it was found that, by the claim registered on 16.04.2018, the plaintiff-victim N.A., in contradiction with the defendant-aggressor N.N.N., requested the issuance of a protection order ordering the defendant to keep a minimum distance of 300 m from the victim and the minor I.N.R., from the residence in District 3, Bucharest and the educational establishment of the minor – namely School X, District 3, prohibiting any contact, including by telephone, correspondence or any other way with the victim.

In support of her claim, the victim-plaintiff stated that she had been in a marital relationship with the defendant for some 18 years, and they have a son who is currently 17 years old. She divorced the defendant; evicted him and 8 protection orders were issued against the defendant.

He filed dozens of complaints and complaints against the defendant, but no action was taken. After the last protection order, the defendant left the country and did not bother her anymore, but when he returned to the country, the scandals started again.

From 8 April, the defendant began to threaten again, followed the complainant to the subway, slapped her, followed her to places where she worked, and she had to take time off to hide. The defendant is shouting in the street that the plaintiff has taken his house and is killing her and her child, the plaintiff's father and her brothers; the defendant has not complied with any

of the protection orders issued so far and she is desperate, believing he will kill her.

Having analysed the documents and the file, the Court notes the following:

The plaintiff and the defendant are ex-spouses, divorced according to civil judgment no. X/22.05.2013, delivered by *Bucharest District 3 Court* in case No. X/301/2013. The marriage resulted in the birth of the minor I.N.R., born on 13.08.2000, whose residence was established with the mother and over whom it was ordered, by civil judgment No. X/05.06.2015, that the mother should exercise exclusively parental authority.

The court notes from the documents submitted by the plaintiff-victim that by civil decision No. X/22.11.2016, issued by the Bucharest Court, Fifth Civil Section, the defendant was ordered to be evicted from the building located in Bucharest, District 3.

In the present case, in order to protect the applicant from the aggressiveness of the defendant, the courts ordered successive protection measures, the eighth protection order issued against the defendant being delivered on 17.07.2017 for a period of 6 months, which expired on 17.02.2018.

From the testimony of the witness heard in the case, the applicant's son, I.N.R., the court notes that he knows from discussions with neighbours that the defendant had left the country and so they were left alone for a period of approx. 4-5 months. From the plaintiff-victim, the witness knows that she was beaten by the defendant after Easter, on 11 April, after which the defendant came every evening with scandal and threats.

In view of the evidence adduced in the case, the court finds that the defendant does not desist from his violent actions, has beaten the applicant in April 2018 and regularly came to the home of his ex-wife and the minor, although he is prohibited from doing so, disregarding court orders and enforcement measures already ordered by the police.

The applicant is still vulnerable since the defendant is acting out of anger at her attempts to remove him from her life, his anger being exacerbated by alcohol consumption.

These acts of violence committed by the defendant may degenerate into more serious acts, the physical integrity of the applicant and the minor being endangered; at the same time, the defendant's actions, which are uncontrollable

due to alcohol consumption, are likely to seriously affect the psychological integrity of the applicant and the minor.

DELIVERED JUDGEMENT:

The Court admits the application brought by the applicant N.A., residing in District 3, Bucharest, against the defendant N.N.N., residing in District 3, Bucharest. Pursuant to the provisions of Article 23 (1) of Law No. 217/2003:

Issues the following protection order provisionally, for a period of 6 months from the date of issue, ordering the following:

– Order the defendant-aggressor N.N.N. to keep a minimum distance of 300 m from the applicant-victim N.A. and the minor I.N.R.

– Order the defendant-aggressor to keep a minimum distance of 100 m from the home of the applicant-victim and the minor, located in Bucharest, District 3.

– Order the defendant-aggressor to keep a minimum distance of 100 m from the minor's school, namely high school X in Bucharest, District 3.

– Prohibits the defendant-assailant from any contact with the victim-plaintiff and the minor, including by telephone, correspondence or any other means. Orders that the defendant-offender undergoes psychological counselling.

ENFORCEABLE.

Tenth protection order issued for psychological violence

(Bucharest District 3 Court, excerpt of the judgement)

By the civil judgement of 18.10.2018 delivered by *Bucharest District 3 Court*, it was found that, by application registered with the *Bucharest District 3 Court* on 17.10.2018, the plaintiff victim N.A. requested the court to decide against the defendant aggressor N.N.N., to order the issuance of a protection order with the following measures: order the defendant-assailant to keep a specified minimum distance from the victim of 300 m, prohibit any contact, including by telephone, by correspondence or in any other way, with the victim, order the aggressor to undergo psychological counselling or psychotherapy and involuntary hospitalization, under the terms of the Law on Mental Health and Protection of Persons with Mental Disorders No. 487/2002, republished, in view of the fact that 9 consecutive protection orders have been issued

against the defendant, his integration into a programme of assistance for drug users, in accordance with Article 22 of Law no. 143/2000 on preventing and combating drug trafficking and illicit drug use, republished, as subsequently amended and supplemented, given that the defendant is a user of psychoactive substances, order the defendant to report periodically to the competent police station at a time set by the court according to the circumstances to supervise compliance with the protection order, have the competent authorities carry out regular and/or spontaneous checks on the whereabouts of the offender.

In the factual grounds of the application, the victim-plaintiff stated that the defendant-assailant is her ex-husband, against whom she has filed criminal complaints and 9 protection orders have been issued, the last one in April 2018.

The plaintiff-victim also pointed out that the parties had been divorced since 2013, when the partition and eviction were decided, and since then the defendant's attitude towards the plaintiff has been very violent, with 9 protection orders having been issued against him, which, however, did not calm him. Thus, the defendant does not understand to leave the plaintiff alone, goes abroad temporarily and afterwards follows her again in subway stations, buses, around block corners, hits her and spits on her unexpectedly. The complainant stated that she keeps away from him and she is afraid that her ex-husband will kill her.

The plaintiff-victim also said that their son always goes with her and watches over her, but even this does not calm the defendant, so she is desperate and terrorized, being terrorized by the defendant for two months, seeing him every day in the shadows, on the subway, on the street, no legal remedy being effective, so she requests his admission to a psychiatric hospital.

The plaintiff-victim is the ex-wife of the defendant-aggressor, the parties having divorced in 2013, as it appears from the statement of the witness I.N.R., son of the parties and from the civil judgment No. X of 22.05.2013, delivered by *Bucharest District 3 Court*.

From the victim-plaintiff's allegations, corroborated by the statement of the witness heard in the case, the court held that the defendant-assailant stalked and threatened the victim-plaintiff with death.

The victim-plaintiff was also sought by the defendant-assailant at work, where he threatened to kill and beat her.

The witness said that he always accompanies his mother to work, where he takes her in a taxi so that nothing happens to her.

The court also noted that the defendant-assailant has alcohol problems and that he was admitted to the Prof. Dr. Al. Obregia Psychiatric Hospital in Bucharest.

The witness mentioned that the day before yesterday the defendant-assailant threatened to kill the plaintiff-victim, but he was not present. The defendant-assailant was calling from various phone numbers, telling them he was going to set them on fire.

The witness also described the defendant as very vulgar, violent and capable of carrying out his plan.

The Court, having regard to the aggressive and humiliating behaviour of the defendant-assailant towards his ex-wife, noting that 9 protection orders have been issued against him, that the applicant-victim has lodged several criminal complaints with the 23rd Police Station and that no legal measures have been taken against him, considers that the physical and psychological integrity of the applicant-victim is at risk.

In addition, the court held that the defendant-assailant has a drinking problem, but the victim-plaintiff did not prove that the defendant-assailant had mental problems and was a drug user.

Accordingly, for the reasons set out above, the Court shall allow the application in part and, pursuant to Article 23 (1) and (3) (b), (d) and (f) of Law No 217/2003 as amended, issue a protection order which, on a provisional basis, for a period of 6 months from the date of issue, orders the following: order the defendant-assailant N.N.N., personal numeric code ... to keep a minimum distance of 300 m from the victim-plaintiff N.A., Personal Numeric Code... , residing in Bucharest, District 3, from her home located in Bucharest, District 3 and from the place of work of the plaintiff-victim, the CT Company, based in Bucharest, District 1.

The court shall prohibit the defendant-aggressor N.N.N., personal numeric code... from any contact with the plaintiff-victim N.A., personal numeric code including by telephone, correspondence or any other means.

The court shall also oblige the defendant-offender to undergo psychological counselling and psychotherapy and shall recommend that he undergo some form of control, treatment or care, in particular for psychological counselling.

Dismisses, for the rest, the application for involuntary admission and integration of the defendant into a programme of assistance for drug users as unfounded, given that the plaintiff-victim did not submit medical documents in the case-file showing the defendant's mental problems, nor did she prove

that the defendant-aggressor is a drug user, having regard to the provisions of Article 249 of the Code of Civil Procedure.

According to Article 29 para. (1), (2) and (3) of Law No 217/2003, the order is enforceable. The execution of the order shall be carried out without a summons or the expiry of any time limit. Compliance with the protection order is also binding on the person protected by it. Violation of any of the measures ordered by the protection order constitutes a criminal offence and is punishable by imprisonment from one month to one year.

Pursuant to Article 31 (1) of Law No. 217/2003, this order shall be immediately communicated to the Romanian Police structures at the victim's and the aggressor's home.

Pursuant to Article 31 (2) and (4) of Law No 217/2003, shall order the immediate enforcement of this protection order by or under the supervision of the police, who shall be obliged to refer the matter to the criminal prosecution in case of evasion.

Pursuant to Article 453 of the Code of Civil Procedure, the court shall order the defendant-aggressor to pay to the State, through the Ministry of Public Finance, the fee of 260 lei for the public defender, transferred to the Bucharest Bar Association, paid from the funds of the Ministry of Justice, and shall note that the plaintiff-victim does not request legal costs.

DELIVERED JUDGEMENT:

The Court admits, in part, the claim brought by the victim applicant N.A., residing in Bucharest, District 3, against the aggressor defendant N.N.N., whose last known address is in Bucharest, District 3.

Issues the following PROTECTION ORDER provisionally for a period of 6 months:

– Orders the defendant-assailant N.N.N. to keep a minimum distance of 300 m from the plaintiff-victim N.A., residing in Bucharest, District 3, from her home located in Bucharest, District 3, and from the plaintiff's place of work, the company CT, based in Bucharest, District 1.

– Prohibits the defendant-assailant N.N.N. from any contact with the plaintiff-victim N.A., including by telephone, correspondence or any other means.

– Orders the defendant-offender to undergo psychological counselling and psychotherapy and recommends that he undergo some form of control, treatment or care, in particular for the purposes of psychological counselling.

Dismisses the remainder of the application as unfounded. Enforceable without a writ of summons or the expiration of any time limit.

**Eleventh protection order issued for physical
and psychological violence**

(Bucharest District 3 Court, excerpt of the judgement)

By civil judgment of 25.07.2019 delivered by the *Bucharest District 3 Court*, it was found that on 23.07.2019 the case number X/301/2019 concerning the plaintiff-victim N.A., in contradiction with the defendant-aggressor N.N.N., was registered with the hereby court, concerning a protection order, by which the applicant requested the issuance of a protection order, for a period of 6 months, ordering the defendant to keep a specified minimum distance from the victim 300 m, ordering the defendant to keep a specified minimum distance from the residence and workplace of the applicant CT SRL, with registered office in District 1, Bucharest and AMB, District 6, prohibit any contact, including by telephone, by correspondence or in any other way with the victim, order the defendant to undergo psychological counselling or psychotherapy, request involuntary admission, in accordance with the Mental Health and Protection of Persons with Mental Disorders Act No 487/2002, republished, order the defendant to report periodically, at a period of time determined by the court according to the circumstances, to the police station competent to supervise compliance with the protection order, order the defendant to inform the police of his new place of residence, if the order has ordered him to be removed from the family home, and to carry out regular and/or spontaneous checks on the location of the offender.

In the grounds of the application, the applicant stated, in essence, that she was married to the defendant until 2013, when the divorce was delivered by the *Bucharest District 3 Court*.

She also pointed out that from 2013 to date he had received 10 protection orders, stating that they had been repeatedly violated and that no measures had been taken against the defendant.

It was pointed out that the defendant is mentally ill, does not undergo treatment, consumes alcohol and has a obsession on the applicant, stating that he will not stop until he kills her. She explained that on 12 July 2019, at around 12:00, the complainant was leaving the Basarab metro station on her way to work, where she started at 14:00, but in order not to meet the

defendant, who had found out where she worked and had made a scandal a few days before, she preferred to go to work early of fear of an encounter.

She said that the defendant came out in front of her, pushed her into a fence, hit her with his hands and fists on her head, on her ribs, causing rib fractures CV III, CIX CX, left, posterior arch, excoriations, and haematomas. She mentioned that she managed to escape, calling a police crew to the scene by calling the Police Station 23, where she had previously been asked to call, not to call 112; the crew that came to the scene called an ambulance, and she was transported to the Central Military Emergency University Hospital – Dr Carol Davila, where a series of investigations were carried out and the police were informed that a criminal file had been registered, without giving a number, without issuing a provisional order and suggesting that the applicant should contact the Police Station 23, where she lived.

The applicant also mentioned that she went to the National Institute of Forensic Medicine “Mina Minovici” where she was examined and told that the medical certificate would be sent to the police, and that on the night of 12 July to 13 July the defendant went to the applicant’s home several times, threatening to kill her, and the applicant contacted the authorities of the 23rd Police Station.

The complainant also stated that on 21 July 2019 the defendant went to her home again and threatened to kill her, and the complainant called the 23rd Police Station again, and the officer told her that a police team would arrive in 15 minutes, but the police never arrived. The complainant mentioned that she is afraid for her life, she is afraid to walk on the street, she is always changing her route, and at work she is afraid that she will be fired, because no employer wants to see a daily scandal in his office.

Having analysed the documents and the file in the light of the evidence, the Court finds as follows:

In fact, the parties are ex-spouses, their marriage having been dissolved by civil judgement no. .../22.05.2013 delivered by the *Bucharest District 3 Court* in case no. .../301/2013, according to the uncontested claims of the plaintiff-victim, corroborated with the checks carried out in the Ecris application.

Between 2013 and 2018, at the request of the victim-plaintiff, 10 protection orders were issued against the perpetrator-defendant. From the analysis of the civil judgments No. X/09.03.2017, No. X/17.07.2017, No. X/18.04.2018

and No. X/18.10.2018 ordering the issuance against the defendant-aggressor of protection orders in the period 2017-2018, the court concludes that the defendant-aggressor has an extremely violent attitude towards the plaintiff-victim, repeatedly following and assaulting her, demonstrating increased dangerousness and perseverance in the manifestation of behavioural aggressiveness.

From the victim-plaintiff's account before the court, it emerged that the last aggressive event took place on 12 July 2019, when the victim-plaintiff, on her way to work, was assaulted by the defendant.

Therefore, from the interpretation of the provisions of Article 23 para. (1), (3) and (4), Article 3 para. (1), Article 5 of Law No 217/2003, the court holds that for any protection order to be issued, an act of violence must be committed in any of the forms listed in Article 4(a) to (g) of Law No 217/2003, and the act of violence must be sufficiently serious to be considered to endanger the victim's life, physical or mental integrity or freedom.

In the present case, the Court finds that from all the evidence submitted it can be concluded that the defendant-aggressor has perpetrated aggression against the applicant-victim in the form of physical violence and psychological violence.

In this regard, the court notes that the claim of the victim-plaintiff that on 12 July she was the victim of a new violent manifestation by the defendant-assailant is verified by the corroboration of the response provided by the Police Station 3 (to the requests of the court to submit the work carried out on the occasion of the incident of 12 July 2019 with regard to the parties, the authorities showing that there are no records at the level of the Police Station 3 regarding this incident, indicating that there are incidents reported at the level of the Police Station 23 (page 23 in the file), with the information resulting from the contents of the medical records submitted to the case file (pages. 7-8), according to which the plaintiff was diagnosed at the Military Emergency University Hospital on 12 July 2019 with *assault, minimal right parieto-occipital epicranial haematoma, rib fractures C VIII, C IX, left CX, posterior arch, left arm haematoma between middle 1/3 and lower 1/3 and excoriations*, with a history of the defendant-aggressor's behaviour manifested towards the plaintiff-victim by physical and psychological violence of increased intensity, but above all with repeated character, the court finding that from 2013 to date 10 protection orders have been issued in favour of the plaintiff-victim and against the defendant-assailant, and with the absence of

the defendant-assailant at the time of the trial granted in the case, having been summoned by telephone to appear in person before the court (page.17).

The behaviour of the defendant-assailant, persistently and continuously for a period of more than five years, was such as to create a strong state of fear in the victim-plaintiff, who told the court how she tried to avoid any contact with the defendant-assailant, namely choosing other routes to travel to work, travelling two hours before the start of work, blocking the defendant's telephone number.

Balancing the restriction of the rights and freedoms of the defendant-aggressor, in the sense of physical freedom and the right to communicate without interference, with respect for the rights and interests of the applicant-victim, in particular the right to mental and physical safety, the court is to give priority to those aimed at protecting victims of domestic violence. There is no doubt that the acts of physical and mental violence committed by the defendant are sufficiently serious to be regarded as endangering the physical and mental integrity of the applicant, and there is a real and present fear that the defendant's violent actions will escalate, with serious consequences for the health and integrity of the applicant-victim.

As regards the content of the protection order to be issued, it shall be determined by the court, taking into account both the principles stipulated in Article 2 of Law No 217/2003, in particular the one set out in letter. c) – “the principle of prevention of domestic violence” and the need to ensure the proportionality of the measure to the seriousness of the situation in question. The Court emphasises that the measures ordered by a protection order must be primarily designed to put an end to acts of violence within the family or family-like relationship and to prevent such acts from being committed in the future.

In the light of the foregoing, the Court considers that the cumulative conditions laid down by Law No 217/2003 for the issuing of a protection order against the applicant victim are met. As regards the measures requested by the order, the court considers that they are capable of bringing about the cessation of acts of domestic violence and the prevention of such acts in the future, without significantly restricting the rights of the defendant-aggressor.

Accordingly, in view of the provisions of Article 23(1) (d) and (f) of Law No 217/2003, as subsequently amended and supplemented, the court shall grant the application and issue a protection order in respect of the applicant and shall order a protection order to be issued provisionally for a period of six months from the date of issue of this order:

DELIVERED JUDGEMENT:

The Court admits the application for the issuance of a protection order filed by the victim-plaintiff N.A., against the defendant-aggressor N.N.N., both residing in Bucharest, District 3, and consequently:

Orders that a protection order be issued provisionally for a period of six months from the date of issuance of this order, ordering the following:

- Orders the defendant-aggressor to keep a minimum distance of 300 metres from the applicant, her home and the applicant's place of work: CT SRL, based in District 1, Bucharest and AMB, District 6.

- Prohibits the defendant-aggressor from any contact, including by telephone, correspondence or any other means, with the applicant.

- Orders the defendant-offender to undergo psychological counselling.

- Orders the defendant-aggressor to report once a week to the Police Station 23, which is responsible for supervising compliance with the protection order.

- Orders the defendant-offender to provide information to the police about his new home.

Orders the competent authorities to carry out regular and spontaneous checks on the whereabouts of the defendant-offender.

On the basis of Article 29 of Law No 217/2003 republished, this protection order is ENFORCEABLE.

Twelfth protection order issued for psychological violence

(Bucharest District 3 Court, excerpt of the judgement)

By the civil decision of 22.01.2020 delivered by *Bucharest District 3 Court*, it was found that, by the application registered in this court on 21.01.2020, the plaintiff-victim N.A., in contradiction with the defendant-aggressor N.N.N., requested that the judgment to be delivered order the issuance of a protection order and: Order the defendant to keep a minimum distance of 300 metres from the applicant-victim for a period of 6 months; order the defendant to keep a minimum distance of 300 metres from the applicant's home, place of work or educational establishment of the protected persons for a period of 6 months, prohibition of any contact, including by telephone, by correspondence or in any other way with the victim; prohibition

for the defendant to move to Bucharest; order the defendant to undergo psychological counselling, to report regularly to the police station, to provide information about the new home. At the same time, it requested the police to carry out regular/spontaneous checks on the defendant's whereabouts.

In the grounds of the claim, the applicant stated that the defendant has mental disorders, having been admitted several times to the Prof. Dr. Al. Obregia Psychiatric Hospital, does not take medication, consumes alcohol and is obsessed with the applicant, his ex-wife, threatening her that he will not stop until he kills her. The applicant lives in a courtyard house owned by her parents; formerly the joint residence of the parties, together with her son, I.N.R., aged 19.

The applicant also states that since 2013, the year of the dissolution of the parties' marriage, she benefited of 11 consecutive protection orders against the defendant, all for a period of 6 months, the last order being ordered by civil judgment

No. .../25.07.2019.

She also stated that the defendant had violated the protection orders issued against him several times, by calling her dozens of times in short intervals and even, on 22.08.2019, approached her workplace at AMB, on which occasion the applicant called 112. The police crew came, caught him, and against the defendant was taken the measure of his detention for 24 hours until 23.08.2019. Subsequently, on 23.08.2019, by the prosecutor's order issued in case No. X/P/2019, the detention measure was changed to judicial control, the defendant declaring that he lives with his mother in Călărași County. However, on the evening of 23 August 2019, the defendant stayed longer on the street where the plaintiff lives, she called the police, but the Police Station 23 opined that the defendant could stay on the street, provided that he respects the distance of 300 m provided by the protection order.

On 25.08.2019 the defendant-assailant was seen by a relative of the plaintiff on the plaintiff's street, in front of the plaintiff's gate, talking to neighbours across the street. On 18.10.2019 the defendant came to the plaintiff's gate, threatening. She called 112 and the parties' son filmed him with his mobile phone. Moreover, on 11.12.2019 the assailant violated the protection order by approaching the applicant's house, the applicant called 112.

The applicant also points out that she has taken all measures to avoid meeting the defendant by chance: she leaves home at 4 to 5 in the morning, she changes routes to work, she has even changed jobs several times, she does

not travel unaccompanied, but all these measures are not enough, because the defendant's sole aim is to follow her and kill her, as he has threatened to do every time.

The applicant has filed several complaints against the defendant at the Police Station 23 for violation of the protection order, but all are pending.

Taking into account that the defendant-assailant has stated that his home is in Călărași, that he has no job and no other relatives in Bucharest and that the only purpose for which he comes to the capital is to threaten and follow the applicant, it is very important that the court orders that he is prohibited from travelling to Bucharest from 25.01.2020, the date on which the previous protection order issued in case No. X/301/2019 expires.

The applicant also states that she has suffered physical injuries and is psychologically ill-treated by the defendant, that she has been admitted to a medical centre, and that she has older medical-legal certificates.

Having analysed the documents and the file, the Court notes the following:

In fact, the parties were married until 2013. After the divorce, the defendant-aggressor frequently came to the parties' former marital home, a courtyard house in district 3, where the plaintiff lived with the parties' son, and caused a disturbance. In view of the threats made by the defendant-aggressor and even the physical and psychological violence exercised by him against his ex-wife, it was necessary to issue successive protection orders, which could not, however, prevent the escalation of tensions between the parties and the incident of serious physical violence on 12 July 2019, when the plaintiff was beaten by the defendant; from the information resulting from the contents of the medical documents filed in the case file, the court holds that the plaintiff was diagnosed at the Military Emergency University Hospital on 12 July 2019 with *assault, minimal right pareto-occipital epicranial haematoma, rib fractures C VIII, C IX, left CX, posterior arch, left arm haematoma between the middle 1/3 and lower 1/3 and excoriations.*

From the address issued by the Police Station 23, the court notes that the applicant has made several complaints to the police and, inexplicably, no measures have been taken against the defendant under the criminal law, not even in the context of the fact that it is obvious that he repeatedly violates the protection orders issued by the court.

From the victim's statement, it is noted that the defendant "*comes every night to my house, to the fence, shouting, threatening me that I won't get rid of him until he kills me. He has been coming for two weeks. I reported him to the police, but they usually arrive 30 minutes late and the defendant would go to the corner of the street where he is no longer in the forbidden zone and the police cannot intervene. It doesn't matter if he is sober or drunk, he says the same things. I think he is mentally ill. He was taken to Obregia by the Police, but they let him go immediately, the next day, because I cannot sign for him to stay hospitalized. I do not walk alone on the street because the defendant is watching me at the gate, the boy drives me. I know that as long as he is in Bucharest, he comes home every evening (...)*".

Therefore, from an interpretation of the above provisions, the court holds that, in order for any protection order to be issued, an act of violence must have been committed, in any of the forms listed in Article 4(a) to (g) of Law No 217/2003, and the act of violence must be sufficiently serious to be considered to endanger the victim's life, physical or mental integrity or freedom.

As stated in the judgment filed in the case file, by which the *Bucharest District 3 Court* issued a protection order for a maximum period of 6 months – civil judgment No. .../25.07.2019 – “balancing the restriction of the rights and freedoms of the defendant-aggressor, in the sense of physical freedom and the right to communicate unhindered, with respect for the rights and interests of the plaintiff-victim, in this case, the right to mental and physical safety, the court shall give priority to those aimed at protecting victims of domestic violence. **There is no doubt that the acts of physical and mental violence committed by the defendant are sufficiently serious to be regarded as endangering the physical and mental integrity of the applicant, and there is a real and present fear that the defendant's violent actions will escalate, with serious consequences for the health and integrity of the applicant-victim.**

As regards the content of the protection order to be issued, it shall be determined by the court, taking into account both the principles stipulated in Article 2 of Law 217/2003, in particular the one set out in letter. c) (“the principle of prevention of domestic violence”) and the need to ensure the proportionality of the measure to the seriousness of the situation in question. The Court emphasises that the measures ordered by a protection order must, in the main, have the effect of putting an end to acts of violence within the family or a family-like relationship and of preventing such acts in the future”.

Accordingly, the Court considers that all the conditions set out above for the order to be issued are met in the present case. Thus, the defendant-aggressor has exercised verbal and psychological violence against the applicant-victim, his ex-wife, by repeatedly threatening to kill her and by acts such as stalking her and provoking a scandal at home, which has led to the creation of a state of tension and mental suffering. At the same time, the defendant also committed acts of physical violence against the victim-plaintiff, which were very serious, given the findings of the forensic certificate filed in the case file. Therefore, the court considers that the physical and psychological integrity of the plaintiff-victim is endangered by the acts of physical and psychological violence committed by the defendant-aggressor, and the measures that it shall grant can ensure her protection, especially **as the court shall order the prohibition for the defendant to stay in Bucharest, to thus prove the serious violation of the order in the event that he comes to the home of the plaintiff.**

Accordingly, for the reasons set out above, the Court shall allow the application pursuant to Article 23 (1) of Law No 217/2003 and issue a protection order, provisionally, for a maximum period of 6 months from the date of issue, ordering the following:

DELIVERED JUDGEMENT:

The Court admit the application for the issuance of a protection order filed by the applicant-victim N.A., residing in Bucharest, District 3, against the defendant-aggressor N.N.N., residing in the commune of I., County of C., with his mother, I.C., and consequently:

Orders that a protection order be issued provisionally for a period of six months from the date of issue of this order, ordering the following:

– orders the defendant-aggressor to keep a minimum distance of 300 metres from the applicant, her home and the applicant's place of work: CT SRL, in Bucharest, District 1 and AMB, in District 6.

– prohibits the defendant-assailant from travelling in the Municipality of Bucharest, except when his presence is requested by the authorities in judicial proceedings.

– prohibits the defendant-aggressor from any contact, including by telephone, correspondence or otherwise, with the applicant.

– orders the defendant-offender to undergo psychological counselling in order to normalise his behaviour towards the applicant.

– orders the defendant-aggressor to report once a week to the police station of the aforementioned residence in the commune of I., competent to supervise compliance with the protection order.

– orders the defendant-offender to provide information to the police about his new home.

Enforceable without a summons or the expiry of any time limit.

Violation of any of the measures ordered by the protection order constitutes a criminal offence and is punishable by imprisonment from one month to one year.

EXECUTIVE.

NOTE

*The victim has obtained 12 protection orders since 2013. The first 8 judgments were presented in the authors' first book – **Domestic Violence. Annotated Judicial Practice**, and the next 4 in this volume.*

None of these 12 protection orders were appealed by the perpetrator, nor were any sought to be revoked, but all were violated. The victim filed dozens of criminal complaints for: violation of protection orders, threats, assault, which were registered at three prosecutor's offices in Bucharest.

It was only in 2019 that two prosecutor's offices drew up indictments and sent the accused-assailant to trial for the following offences: assault or other violence (offence provided for by Article 193 para. (2) of the Criminal Code), threatening (offence provided for in Article 206 para. (1) of the Criminal Code.) and violation of the protection order (act provided for by Article 32 para. (1) of Law No. 217/2003), with application of the provisions of Article 38 para. (1) of the Criminal Code. Preventive measures were also ordered against the assailant: detention for 24 hours, 30 days' pre-trial detention and judicial supervision.

After the expiration of the detention and preventive arrest measures, but under judicial control and under prohibition to be in Bucharest (ordered by a protection order), the assailant continued to approach the victim's home, even during the state of emergency, uttering threats against her.

The victim sought protection from the authorities many times, but her physical and mental health were constantly at risk. Even today, the victim does not feel safe, does not walk alone on the street, frequently changes her working hours and places of work, so that she makes it difficult for the perpetrator to identify her. The victim is protected by a security company, and she has a panic button installed in her home.

But the authorities' lack of reaction led her to stop asking for their protection and so she was assaulted on the street, in broad daylight, without anyone intervening, and the police crew that arrived on the scene did not issue a protection order, but only called the ambulance, which transported the victim to hospital. Doctors found significant internal injuries and notified the police, according to protocol, but the second police unit, which arrived at the medical facility, did not issue a protection order for the victim either.

The victim went alone to the National Institute of Forensic Medicine "Mina Minovici" to obtain a forensic certificate and turned to the ANAIS Association for assistance in obtaining a court order of protection.

On two consecutive days, the Bucharest District 1 Court and the Bucharest District 3 Court ordered the preventive arrest of the victim's ex-husband.

On 08.07.2020, the Bucharest District 1 Court sentenced the defendant-aggressor to "1 year and 2 months imprisonment. Based on Article 45 para. (3) letter. a) of the Criminal Code, the defendant shall be sentenced to the additional punishment of disqualification from exercising his rights provided for in Article 66 para. (1) a), b), n) (right to communicate with the injured person N.A. and to approach her) and o) of the Criminal Code (right to approach the home and workplace of the injured person N.A.) for a period of 5 years, the additional penalty to be executed in accordance with Article 68 para. (1) c) of the Criminal Code. Based on Article 45 (5) of the Criminal Code, the defendant shall be sentenced to the accessory penalty of prohibition of the exercise of the rights provided for in Article 66 para. (1) a), b), n) (right to communicate with the injured person N.A. and to approach her) and o) of the Criminal Code (right to approach the home and workplace of the injured person N.A.), during the execution of the main decision".

The Public Prosecutor's Office of the Bucharest District 3 Court has indicted the defendant N.N.N. in two cases for the offences of threatening and violating court decisions.

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“ (...) victims (...) should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. (...) Victims (...) should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.”

Recital 9 of the preamble of Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime

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