

THE PHENOMENON OF DOMESTIC VIOLENCE FROM THE PERSPECTIVE OF THE LEGISLATIVE FRAMEWORK

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Abstract: *The effectiveness of the legislative framework in the field of domestic violence has always been a topic of interest to the people of our country. Over time, there have been several campaigns to raise public awareness of the seriousness of this phenomenon but following the statistics we note that the existing legislative measures are insufficient to combat this phenomenon, hence the necessity to adopt legislative strategies to protect the victim and ensure the immediate sanctioning of any act of violence committed in the family. The investigative approach is represented by a quantitative research, a sociological questionnaire was applied to a number of 60 subjects from Caraş-Severin County. The aim of the research was to identify the perception of the population regarding the involvement of the authorities in combating and preventing domestic violence.*

Keywords: *domestic violence; victims; legislation; authorities; involvement.*

1. Introduction

The phenomenon of domestic violence is widespread in the world. A survey in the 28 EU Member States on a sample of 42,000 women highlighted the extent of domestic violence, with 20% of women admitting to being physically and / or sexually abused by their current life partner. or previously, only 14% of them reported this incident. In Romania, the percentage of women who have suffered these forms of abuse from current or previous partners is 24% and reaches the value of 14%, for abuse represented by persons other than the partner. As for psychological abuse, it was admitted in the lives of 43% of people participating in the study. It is an alarming percentage that leads us to carefully analyse the legislative framework, which aims to support and protect victims and discourage and combat domestic violence (European Union Agency for Fundamental Rights, 2014).

2. Legislative dimension on violence against children and families

Although most victims of domestic violence are women and children, it should be noted that not only women can be victims of this form of abuse, but also men, and protection against domestic violence will not differ according to the sex of the victim. From a legal point of view in the field of domestic violence, the following legislative documents are important:

- **Law no. 217/2003** on combating and preventing domestic violence was the first law in the field of domestic violence. This law was amended in 2012 by Law no. 187 / 24.10.2012, which refers to the application of Law no. 286/2009 on the Criminal Code. As per Law no. 217/2003, the state has the obligation to ensure, through national and local programs, information, understanding and activation of public opinion on this issue, research, studies, but also the development of the functional system in this field, which begins with the training of specialized and continues to ensure efficient case management from reporting and registration. In order to protect the victim, especially in extreme cases, the same law recommends emergency intervention, both by the police and by the social protection bodies;
- **Law no. 174/2018** specifies the instruments by which it is provisionally pursued. The provisional protection order will be issued within a maximum of 72 hours from the reporting of the aggression and has a duration of 5 days, but in reality does not exceed 120 hours, according to art. 22 paragraph (2) of Law 217/2003.

The maximum duration of the protection order cannot exceed six months (Iacuba and Diaconu, 2019:172), which may be insufficient in the conditions of very violent aggressors who can wait for this period to take revenge later. Moreover, during this limited period, there is only an information to the aggressor that he is not allowed to approach the victim, but there are no electronic surveillance systems to signal the violation of this provision. In most cases, the very fact that the police do not really assess the danger posed by the aggressor and the lack of reaction or delayed reaction can have disastrous results on the victim. All of the above become the reasons why the victims do not seek the support of the authorities.

3. Legislative framework in the field of child protection, victims of domestic violence

Following the evolution of the legislative framework along time, we point out the issued legislative acts, which aim at the protection of children, victims of domestic violence:

The Family Code of 1953, as subsequently amended and supplemented, updated in 2010 Article 109 on the exercise of parental rights and the attainment of the health and physical development of children by abusive or negligent misconduct in the performance of parental duties, or if the education or professional training of the child is not done in the spirit of devotion to Romania, the court, at the request of the guardianship authority, may request the revocation of the parent's rights (<http://legislatie.just.ro/>).

Romania ratified in 1990 the Convention on the Rights of the Child, with the obligation to comply with the provisions of the legislation in force. Article 19 of the Convention deals with the prevention of abuse and neglect. The signatory states, parties in the Convention, shall take appropriate legislative measures to protect the child "against any form of violence, harm or abuse, physical or mental, neglect or neglect, ill-treatment or exploitation" (Law 18/1990 on the ratification of the Convention on the Rights of the Child published in M. Of.314 / 13.06.2001).

According to Decision no. 502/2017 which refers to the coordination and optimum operation of the Commission for Child Protection, the Commission provided in art. 115 of Law no. 272/2004 on the protection and support of children's rights, with subsequent amendments and completions, the specialized body, without legal personality, of the county council, respectively of the local council, of the Bucharest municipality sector, with decision-making activity for child protection.

Law no. 272/2004 on the protection and support of the rights of the child, with subsequent additions and amendments.

Law no. 272/2004, on the protection of the child against abuse or neglect, reads in Article 89: "the neglect of children means the failure, whether voluntary or not, of a person responsible for the upbringing, care or education of the child, to take any action in accordance to such a responsibility". Article 90 discusses the protection of the child and provides for the prohibition of corporal punishment, deprivation of the child's life-threatening rights in the development of "physical, mental, spiritual, moral or social, bodily integrity, physical or mental health of the child" (Art. 89 and Art. 90 of Law no. 272/2004).

Law no. 286/2009 on the Criminal Code. According to this law, ill-treatment of a minor is sanctioned by the application of article 306 (on the obligations of criminal prosecution bodies), aggression against one person against another, by crimes against life, bodily integrity and health (art. 174-184) and by sexual offenses (art.197-199, art. 202-203).

Law no. 287/2009 regulates the patrimonial and non-patrimonial relations between persons, as subjects of civil law.

Order no. 288/2006 for the approval of the Minimum Standards in the field of child protection.

Order no. 286/2006 on the approval of the Methodological Norms regarding the elaboration of the Service Plan and of the Methodological Norms regarding the implementation of the PIP (Individualized Protection Plan). (<https://www.protectiacopilului6.ro/>)

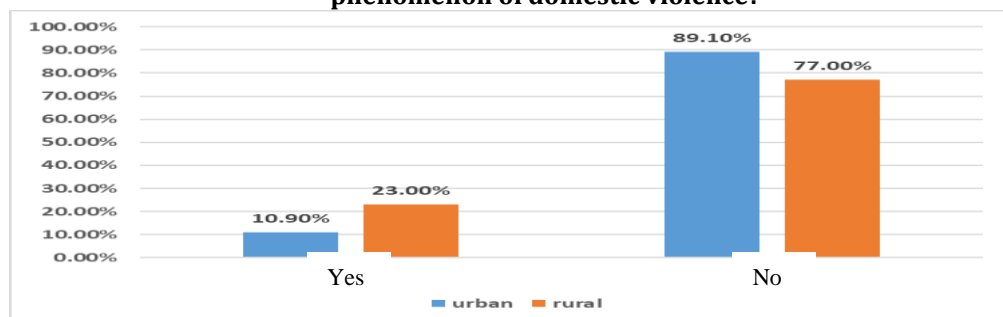
4. Research methodology

In the present research approach, the method used was the sociological survey based on a questionnaire. The survey is one of the most complex methods of sociological investigation, based on collecting data from a sample taken from a population. The data are collected by questioning the subjects. (Curelaru, 2003,: 45). „The investigation questionnaire is a technique and correspondingly an investigative tool consisting of a set of written questions and possibly graphic images, logically and psychologically ordered, which by administration by the survey operators or by self-administration, is meant to collect answers from the respondents, which will be recorded in writing” (Chelcea, 1998:180). The research group consisted of 60 subjects aged between 18 and 65 years. The research was conducted in rural and urban communities in Caraș-Severin County, between September and December 2021.

5. Data analysis and interpretation

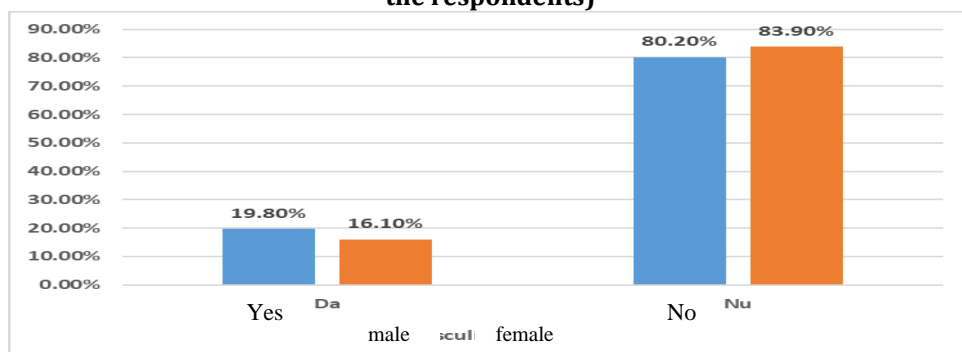
Fig.1. Involvement of the authorities in combating domestic violence (the background of the subjects)

1. Do you think that the authorities are sufficiently involved in combating the phenomenon of domestic violence?



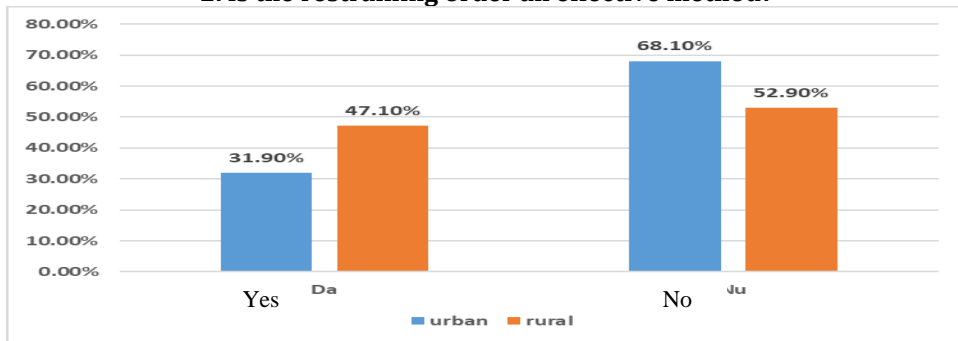
From the analysis of the answers to the item related to the involvement of the authorities in combating domestic violence, we notice that the majority of respondents, 89.10% (urban) and 77.00% (rural) consider that the authorities are not involved enough to combat domestic violence, a percentage of 10.90% (rural) and 23.00% (urban) believe that the authorities are involved in combating the phenomenon.

Fig.2 Respondents 'perception of the authorities' involvement (depending on the sex of the respondents)



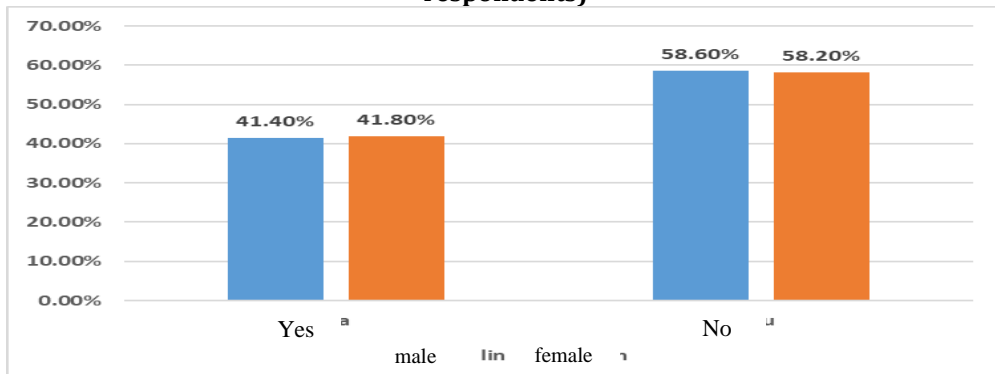
From the analysis of the answers, depending on their sex, we find that a very large number of people consider that the authorities are not sufficiently involved in combating and preventing domestic violence (80.20% men and 83.90% women), and a very small percentage state they trust the authorities and that from their point of view they are sufficiently involved in reducing the number of cases of domestic violence in contemporary society (19.80% men and 16.10% women). The main victims of domestic violence are women and the aggressors are men, which can be supported by the slight differences of opinion (although statistically insignificant) regarding the involvement of the authorities.

Fig 3. Efficiency of the restraining order (depending on the environment of origin)
2. Is the restraining order an effective method?



As for the effectiveness of the restraining order depending on the environment of origin, we note that a significant percentage, 68.10% of those surveyed in urban areas point out that the restraining order is not an effective method to combat violence, a similar answer is found and in rural areas, where 52.90% of respondents consider the same. There are also voices claiming the opposite, considering that the restraining order is effective in combating this phenomenon, namely, 31.90% (urban) and 47.10% (rural).

Figure 4. Effectiveness of the restraining order (depending on the sex of the respondents)



Analysing the effectiveness of the restraining order, according to the criteria of the sex of the investigated subjects, we find that over 55% of the respondents do not consider that the restraining order is an effective method to support victims (58.60% male subjects and 58, 20% female subjects), and 41.40% of men and 41.80% of women consider the restraining order as an effective method.

6. Conclusions

Domestic violence, that is violence between intimate partners, is considered an integral part of "any society". In societal development there are impediments created by the system of values and social concepts, so diversified in contemporary society. An impediment considered visible and important is represented by the stereotype of values, and analysing the situation in terms of sex, which emphasizes and perpetuates the image of women in society, outlines a major differentiation.

In recent decades, society has paid more attention to the phenomenon of domestic violence, although initially it was seen as a private family problem that does not require state intervention to be solved, in the three-dimensional society in which we live, this has changed radically due to involvement the media and feminist groups, which exposed the seriousness and long-term repercussions of this phenomenon.

After analysing the answers obtained in the current research, of the 60 people surveyed in Caras-Severin County, the following conclusions were drawn: the respect for human rights and the promotion of equal opportunities must be a priority for any state given the fact that non-discrimination is a fundamental part of society's development process; taking into account the implications and effects of domestic violence, which affect the cohesion of the family, but also the whole society, it is necessary to adopt rigorous legislative measures with real applicability and efficiency, useful in combating domestic violence. Therefore, given the scale of the phenomenon of domestic violence in Romania, it is necessary to adopt and implement legislative measures to provide immediate safety and protection to the victims.

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12. ***<http://legislatie.just.ro/>.