Fighting Domestic Violence - Romania

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# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

The relevant statutes that cover domestic violence in Romania are as follows:

Law No. 286/2009 of the Criminal Code (specifically Chapter III "Offenses against a family member")[1]

Law No. 217/2003 on Preventing and Fighting Against Domestic Violence[2]

## 1.2 What is the controlling case law?

Up until 2019, there have been no criminal cases relating to domestic violence.

## 1.3 What are the specific parts of the court system that address domestic violence?

The legal proceedings of domestic violence cases are dealt with at the [High Court of Cassation and Justice](https://en.wikipedia.org/wiki/High_Court_of_Cassation_and_Justice) of Romania (*Înalta Curte de Casaţie şi Justiţie*).

Article 27(1) of Law No. 217/2003 on Preventing and Fighting Against Domestic Violence outlines the protection measures that the court can order for victims of domestic violence.[3]

## 1.4 What are potential causes of action?

During the legal proceedings or the trial, on the complaint of the victim or *ex officio*, whenever there is solid evidence or indications that a family member has perpetrated a violent act that causes physical or psychological suffering to another family member, the High Court of Cassation and Justice of Romania can temporarily use one of the measures stipulated by Articles 113 and 114 of the Penal Code, as well as preventing a return the family home.

In Romania, protection orders for survivors of domestic violence can be issued within 72 hours by a court of law.

To recover the material damage or to compensate for the moral or other damage suffered, the victim can become a civil claimant in the criminal proceedings and formulate civil claims (compensation, recovery in the previous situation, etc.). If the civil party has not participated in the criminal proceedings, they can bring to the civil court an action to repair the damage caused by the crime.

The injured person can also obtain protection of their non-patrimonial rights by means of civil claims as stated in Article 68, paragraph 1 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

# 2. Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

Domestic violence victims are entitled to claim civil legal remedies. Victims of domestic violence crimes or offenses against sexual freedom and integrity have the right to be granted financial compensation by the state. Articles 21-26 of Law No. 211/2004 address some measures to ensure information, support and protection for victims' offenses.[4]

Criminal legal remedies for domestic violence victims can include prohibiting parental rights; communication with the victim or their family members or approaching these persons; approaching the house, the workplace, etc.; being in certain localities; and owning, carrying and using any category of weapons.[5]

The legal proceedings for domestic violence will be done through the penal process, which can have a civil part as long as it is exercised within the criminal process.[6]

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Romanian legislation does not yet regulate domestic violence separately. While the number of women victims of domestic violence, reported in 1998, is five times larger than in 1996, presently, there is no specific legal protection for victims of domestic violence.[7]

Romania has no violence against women law but it does criminalize numerous forms of violence. The law on preventing and combating violence in the family in Romania was amended in 2012 to provide for restraining orders. The new law includes verbal violence, psychological violence, physical violence, sexual violence, economic violence and social violence.

## 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

Yes. Romania signed the convention on 27 June 2014. It was later ratified on 23 May 2016 and it entered into force on 1 September 2016.[8]

## 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

The Istanbul Convention was ratified in 2016 and, through Law No. 174/2018, the provisions of the Istanbul Convention were partially transposed. The provisions of Article 9, paragraphs (1) and (3) from the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 (establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA) were published in the Official Journal of the European Union, L series, issue 315, 14 November 2012.[9]

Through Law No. 174/2018, the phrase "family violence" was changed to "domestic violence" in national legislation, in accordance with the text of the convention.

Domestic violence was redefined as follows:

Any intended action or inaction of physical, sexual, psychological or economic violence that occurs 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.

## 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

Romania has signed the Istanbul Convention.

## 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

N/A

## 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

N/A

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

This represents any physical or verbal action deliberately perpetrated by a family member against another member of the same family that causes physical, psychological or sexual suffering or a material prejudice.

It is also considered as hindering the woman from exercising her fundamental rights and liberties.[10]

## 3.2 Stalking

N/A

## 3.3 Harassment

This is an act that repeatedly seeks, without a right or without a legitimate interest, a person or observes their home, work or other places frequented by them, causing the victim to live in a state of fear.[11]

## 3.4 Victim

N/A

## 3.5 Abuser

N/A — the term "perpetrator" is used but it is not defined.

## 3.6 Civil protection order

N/A

## 3.7 Causes of action

N/A

## 3.8 Marital rape

N/A — Law No. 286/2009 of the Criminal Code defines rape and it does not exclude marriage.[12]

## 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

N/A

# 4. Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

## 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, according to Law No. 174/2018 (which supplements Law No. 217/2003 on Preventing and Fighting Against Domestic Violence), victims can apply for a provisional protection order (in accordance with Article 52 of the Istanbul Convention) if a victim is in immediate danger and a protection order for long-term protection.

## 4.1.2 Who can petition for civil protection orders?

Victims of domestic violence committed by a family member can apply. Other parties can also apply on behalf of the victim.

Domestic violence can cover many forms of abuse, including physical and verbal violence, psychological violence, and sexual, economic, social and spiritual violence. Family members can include husbands, wives, brothers, sisters, people who have a relationship similar to a husband/wife, ex-spouses, guardians and legal representatives.

## 4.1.3 Are there temporary custody of a child or child support orders?

Law No. 287/2009 allows the child protection authorities to apply for an order in the guardianship court to remove a child from their parents if their life, health or development is endangered.

If the circumstances change and the child is no longer endangered, the child can be returned to their parents.

## 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Yes, there is a provision that the abuser has to move out of the home, even if they own it. They can also be ordered: (i) to stay a minimum distance away from the victim (including from their workplace, school, etc.); (ii) to stay away from certain places or designated areas that the victim attends or visits regularly; and (iii) not to telephone or email the victim.

## 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

A provisional protection order is an emergency order issued by the police for up to five days. The prosecutor has to obtain a court order to confirm it and they can prolong the provisional protection order until a protection order can be obtained.

## 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Yes. Under Article 28 of Law No. 217/2003 on Preventing and Fighting Against Domestic Violence, an application for a protection order can be filed on behalf of a victim by the victim's representative, a prosecutor, social services or another competent authority with the consent of the victim.

The victim can also choose to withdraw the application made by someone else.

## 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

See above (provisional protection orders for emergencies and protection orders).

## 4.1.8 Are ex parte orders permitted without the aggressor being present?

Provisional protection orders can be issued without the presence of the aggressor.

## 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

A protection order will protect the children where the aggressor is banned from the home, and it can order the removal of the children to a temporary care home and restrict custody.

It can also order the aggressor to maintain a prescribed distance away from the victim and other members of the victim's family.

## 4.1.10 How long do the orders last?

Protection orders last for a maximum period of six months. After its expiration, the victim can reapply for a further protection order if the same conditions apply.

A provisional protection order lasts for five days but it can be extended until the protection order is granted.

## 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

[Revision\_Corrected text\_Study Report EN Justice for Women (1) (prorefugiu.org)](http://prorefugiu.org/wp-content/uploads/2019/03/Study-Report-EN.pdf)

[Issuance and implementation of provisional protection orders - Oana Bîzgan - Parlamentar România (oanabizgan.com)](https://oanabizgan.com/en/issuance-and-implementation-of-provisional-protection-orders/)

## 4.2 Steps for receiving a protective order

## 4.2.1 What documentation is needed to obtain a civil protection order?

A police officer can issue a provisional protection order immediately based on an on-site assessment of risk from what they see or any materials they have access to (such as texts, online materials, photos, etc.). Within 48 hours of issuing the provisional protection order, the police officer needs to provide supporting statements and evidence to the prosecutor to provide to the court.

## 4.2.2 Does the victim need to attend a hearing?

N/A

## 4.2.3 Can you request remedies?

Yes, you can request a provisional protection order and civil remedies (e.g., damages).

## 4.2.4 Are there time limits?

N/A

## 4.2.5 Are there different rules in emergencies?

N/A

## 4.3 Judicial discretion

## 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

N/A

## 4.3.2 Are there age limits on who can obtain orders?

N/A

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

N/A

## 4.4.2 Can they recover wages and profits lost?

N/A

## 4.4.3 Is a separate civil process required?

N/A

# 5. Prosecutorial considerations

## 5.1.1 When do the police get involved in domestic disputes or legal actions?

N/A

## 5.1.2 What circumstances effect law firm involvement?

N/A

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

According to Article 101 of the Romanian Criminal Procedure Code, it is prohibited to use violence, threats or other coercive means, as well as promises or inducements, to obtain evidence.

Hearing methods or techniques affecting the capacity of persons to remember and tell conscientiously and voluntarily facts representing the object of taking evidence may not be used. This prohibition applies even if a person subject to a hearing gives their consent in relation to the use of these hearing methods and techniques.

Criminal judicial bodies or other persons acting on their behalf are prohibited from entrapping a person into committing or continuing to commit a criminal act to obtain evidence.

Evidence obtained through torture and evidence derived from torture may not be used in criminal proceedings. Evidence obtained unlawfully may not be used in criminal proceedings as per Article 102 of the Romanian Criminal Procedure Code.

## 5.2.2 Are there any requirements regarding evidence and documents?

According to Article 103(1) of the Romanian Criminal Procedure Code, pieces of evidence do not have a value preestablished by law and they are subject to the free discretion of judicial bodies, based on the assessment of all pieces of evidence produced in a case. Documents, expert reports or fact-finding reports, minutes, pictures and physical evidence can qualify as evidence.

## 5.2.3 Is proof "beyond a reasonable doubt" required?

Conviction is ordered only when the proceeding criminal court is convinced that the charge was proven beyond any reasonable doubt.

A court sentence ordering a conviction, waiver of penalty or delay of penalty may not be based decisively on statements of the investigator, of informants or of protected witnesses as per Article 103(2-3) of the Romanian Criminal Procedure Code.

## 5.2.4 Is the standard of proof different for ex parte orders?

N/A

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes, according to Article 10 of the Romanian Criminal Procedure Code, the parties and main subjects in the proceedings have the right to defend themselves or to be assisted by a counsel (including a defense lawyer).

Judicial bodies are under an obligation to ensure the full and effective exercise by the parties and main subjects in the proceedings of their right to defense throughout the criminal proceedings. The right to a defense will be exercised in good faith.

## 5.3.2 Is willful intent required?

As an essential feature of the offense, guilt exists when an offense is committed with intent, recklessly or intentionally exceeded.

## 5.3.3 Are false accusations punishable for the victim?

There is a way to receive material or moral compensation in cases of judicial error or the illegal deprivation of freedom, or other cases. In addition, a criminal complaint made by a denunciation or complaint of the existence of an offense under criminal law or in connection with a person committing these acts who knows that it is not real is punished with imprisonment from six months to three years, or a fine.

## 5.3.4 How is consent discussed in the law?

Under Law No. 286/2009 of the Criminal Code, the consent of the injured person or victim does not take effect for crimes against life and when the law excludes the effect of supporting it.

## 5.3.5 Is self-defense or insanity a defense?

Yes, they can result in omitting or stating the irresponsibility of the offender.

## 5.4 Witness status

## 5.4.1 What is a witness's duty to testify honestly and completely?

This means you have a duty to act independently and to be honest, trustworthy, objective and impartial. You must not allow your views about a person to affect the evidence or advice you give.

## 5.4.2 Who may abstain from testifying in certain situations?

According to Article 117 of the Romanian Criminal Procedure Code, the following persons are entitled to refuse to testify:

a suspect or a defendant's spouse, ancestors and descendants in the direct line, as well as their siblings

persons who were a suspect's or a defendant's spouse

## 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

If there is some reasonable suspicion that the life, physical integrity, liberty, property or professional activity of the witness or of a family member of the witness could be jeopardized as a result of the information the witness provides to the judicial authorities or of their depositions, the competent judicial authority will grant them threatened witness status and will order one or more protection measures provided for in Article 126 or Article 127, as necessary.[13]

## 5.4.4 What is the impact of domestic violence on witnesses who are children?

Yes. Underage witnesses are treated as vulnerable witnesses with the following rights:

escorting and ensuring the protection of the witness or of their family members when leaving the accommodation

conducting a hearing with the witness without them being present with the help of audiovisual means of transmission, with their voice and image blurred, when the other measures are not enough[14]

## 5.4.5 Can children be called upon to testify?

It is implied by virtue of any person being summoned in criminal law and the special provisions for underage witnesses in criminal law. Any person may be summoned and heard as a witness, except for the parties and the main trial subjects. Under Article 124 of the Romanian Criminal Procedure Code, there are special provisions for underage witnesses.[15]

Child witnesses are treated in the same way as child victims.[16] If a child is a victim, they are considered vulnerable.[17]

## 5.4.6 What is the effect of a child victim on the charges against the offender?

Child victims, victims who are in a relationship of dependence with the perpetrator, victims of terrorism, organized crime, human trafficking, violence in close relations, sexual violence or exploitation, and victims of crimes are presumed vulnerable.[18]

## 5.5 Penalties and sentencing; penalty enhancements

## 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

It is not clear if there are reduced sentencing/penalty guidelines for first-time domestic violence offenses.

## 5.5.2 Are there criminal penalties?

Yes. Under the current law, domestic violence represents any physical or verbal action deliberately perpetrated by a family member against another member of the same family that causes physical, psychological or sexual suffering or a material prejudice. A "family member" is defined as a spouse or a near relation.

If a family member commits murder, hitting/injury or bodily injury causing death, the maximum term of the penalty set by law will be increased by one-fourth. For example, murder is punishable with imprisonment from 10­ to 20 years; therefore, the maximum penalty will be 25 years.[19]

## 5.5.3 What is the result of a violation of an existing order for protection?

Violating an existing order for protection will result in a sanction.[20]

## 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

Monetary sanctions can be brought against domestic violence offenders and against human service/social workers.[21]

## 5.6 Post-release restrictions

## 5.6.1 Does the law notify the victim of the offender's release from custody?

Yes. Article 111 of the Romanian Criminal Procedure Code provides the right of victims to be informed of the release, in any manner, of the perpetrator.

The victim will be informed at the first hearing that if the defendant will be deprived of freedom, and respectively sentenced to imprisonment, the victim has the right to be informed of the perpetrator's release in any way.[22]

# 6. Special issues

## 6.1 Battered woman syndrome

## 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

N/A

## 6.2 Domestic violence in the workplace

## 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

N/A

## 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

N/A

## 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

N/A

## 6.3 Immigration

## 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

N/A

## 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

N/A

## 6.3.3 Does domestic violence law discuss asylum accessibility?

N/A

## 6.4 Armed forces

## 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

N/A

## 6.5 Child custody and child/spousal support

## 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

N/A

## 6.6 Housing rights of domestic violence victims

## 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

N/A

## 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

N/A

## 6.6.3 Can an order exclude the abuser from the residence?

N/A

## 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

N/A

# 7. Endnotes

[1]    [CDL-REF(2018)042-e (coe.int)](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282018%29042-e).

[2]   [[UNOFFICIAL TRANSLATION] (legislationline.org)](https://www.legislationline.org/download/id/6842/file/Romania_law_preventing_fighting_against_domestic_violence_2003_en.pdf).

[3]    [[UNOFFICIAL TRANSLATION] (legislationline.org)](https://www.legislationline.org/download/id/6842/file/Romania_law_preventing_fighting_against_domestic_violence_2003_en.pdf).

[4]   [Report submitted by Romania pursuant to Article 68](https://rm.coe.int/state-report-on-romania/16809b9faf), pp. 41-42.

[5]   Article 66, paragraph (1) of Law No. 286/2009 of the Criminal Code.

[6]   Articles 19 and 27 of the Romanian Criminal Procedure Code.

[7]    <https://www.legislationline.org/documents/action/popup/id/7703>.

[8]   Chart of signatures and ratifications of Treaty 210 — available at: [Full list (coe.int)](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=Hfq6aBRE).

[9]    <https://blog.wave-network.org/ic-romania>.

[10]    Article 2(1) of Law No. 217/ 2003 on Preventing and Fighting Against Domestic Violence.

[11]    Article 208 of Law No. 286/2009 of the Criminal Code.

[12]   Article 218 of Law No. 286/2009 of the Criminal Code.

[13]    Article 125 of Law No. 135/2010 regarding the Romanian Criminal Procedure Code.

[14]    Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO): Report submitted by Romania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Baseline Report). Received 6 February 2020, p. 58 of the Annex.

[15]    <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF>.

[16]    Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO): Report submitted by Romania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Baseline Report). Received 6 February 2020, pp. 38-39.

[17]   P. 58 of the Annex implies that vulnerable victims can be witnesses. It states that a vulnerable witness can be an underage witness.

[18]  Article 113 of Law No. 135/2010 regarding the Romanian Criminal Procedure Code.

[19]    Law No. 286/2009 of the Criminal Code.

[20]   Law No. 217/ 2003 on Preventing and Fighting Against Domestic Violence.

[21]   Law No. 217/ 2003 on Preventing and Fighting Against Domestic Violence.

[22]   Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO): Report submitted by Romania pursuant to Article 68, paragraph 1 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Baseline Report). Received 6 February 2020, p. 63 of the Annex.

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