

# MANAGEMENT OF VIOLENCE AGAINST WOMEN AND CHILDREN COMPARISON BETWEEN THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA AND THE CRIMINAL CODE OF ROMANIA

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**ABSTRACT:** *In a world so diverse with so many implications, where globalization is increasingly taking its toll, the rate and size of social problems is constantly on the rise. Regardless of the level of development recorded by current societies, they still remain powerless in the face of acts of violence. Today, violence exists in many forms and manifests itself in acts and actions that cause pain and suffering to the abused.*

*Currently, there is a huge need for social intervention and reduction of violence where it cannot be suppressed altogether. All these things, in one way or another, force us to determine what are the causes that cause violence and what are the most appropriate ways to eliminate violence in family life or outside of it. Despite the very high number of acts of violence that occur daily, the societies of the world still show little interest when it comes to preventing and combating this phenomenon. One of the factors that confirms this is the fact that, at present, both at the level of Romania and at the level of the Republic of Moldova, there are very few researches and statistics on domestic violence and violence outside the family, and those that exist are not exactly up-to-date.*

*In this sense, our study sought, through a sociological research, the deepening of some elements to try to establish the level at which today's society still faces acts of violence manifested by aggressors in various forms, but also to clarify the essential a frugal social life, a fulfilling social life, which provides the opportunity for the growth and education of future generations. In this context, this paper proceeds with a sociological study specific to the forms and, respectively, measures, including legislative ones, that can be taken. Of course, this practical study mostly looks at Romania and the Republic of Moldova as the legislations are somewhat close.*

*The present study aims to show to what extent the legislations in the two countries are able to reduce or eradicate the phenomenon of violence in the family, respectively, outside the family. This study allows us to identify, on the one hand, to what extent the legal power of the two states is aimed at combating the phenomenon, and on the other hand, to what extent the responsible state authorities intervene when they are informed about the existence of acts of violence, but also to what extent the institutions called are able to give a firm response in abolishing the phenomenon.*

**KEY WORDS:** *Violence; woman; child, Penal Code of Republic of Moldova, Penal Code of Romania.*

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## 1. IN GENERAL ABOUT VIOLENCE AND ITS FORMS

Motto: *"That's how they were brought up - parents - and that's how they learned that it's the easiest way, why explain something to a child for two hours, slap them twice and it's solved immediately"*

*(a child's view on domestic violence)<sup>1</sup>*

Known since ancient times, human violence has evolved into different forms. It is obvious that the current definition of violence, as found in various dictionaries, no longer corresponds to the meaning given to the term hundreds or thousands of years ago. One thing is certain, however, and that is that acts of violence endanger human security and integrity on an ongoing basis, thus preventing the satisfaction of the personal needs mentioned in Maslow's pyramid, where the Need for safety<sup>2</sup> and security is ranked second. Regardless of one's gender, age or nationality, the chances of having been a victim of violence at least once in one's life are extremely high. However, there are two particularly vulnerable groups, namely women and children. Thus, whether we are talking about domestic violence, violence in schools, violence in public or private state institutions or violence in the street, the inability of children and women to defend themselves has made these two categories the most common victims. In addition to the impossibility or difficulty of defending themselves, victims frequently encounter another problem, namely their inability to define the concept of violence and identify its forms. So what is violence and what are its forms?

From an etymological point of view, the notion of violence comes from the Latin *vis* and means force. Although the term violence has evolved with civil society, and today there are many forms of violence, the number of which is constantly increasing, we note that, from its origins to the present day, the act of violence involves the application of superiority to a person and its domination. Since this is a subject of global interest, over the years, a great many authors, specialists in various fields and representatives of specialised institutions have defined the term violence on numerous occasions. Thus, the National Centre for the Prevention of Child Abuse of the Republic of Moldova considers that "violence occurs when the words or actions of a person frighten, cause pain and suffering to another person. It is also when someone threatens to hit or hurt someone else"<sup>3</sup>. From a psychological point of view, on the other hand, violence is designated as aggressive behaviour manifested in socially undesirable ways. The World Health Organization defines violence as "the intentional use of force or power, whether actual or threatened, against oneself, another person, or a group or community, that results in, or is highly likely to result in, injury, death, psychological harm, developmental impairment or depravity."<sup>4</sup>.

Interpreting Freud's work, we conclude that violence is always the result of frustration, and frustration always leads to violent behaviour. On the other hand, according to Eric Debarbieux "violence is the brutal or continuous disorganisation of a personal, collective

1 <https://www.salvaticopiii.ro/ce-facem/protectie/protectie-impotriva-violentei>, accesat la 23.08.2023.

2 A se vedea: Iulius Cezar Dumitrescu, *Dreptul la libertate și siguranță în Constituțiile României și Republicii Moldova*, Revista de Drept Penal, Anul XVII, nr. 2, aprilie-iunie 2010, pag. 181-190.

3 <https://www.cnpac.md/ro/ce-este-violenta/>, accesat la 23.08.2023.

4 <https://www.who.int>, accesat la 24.08.2023.

or social system, resulting in a loss of integrity, which may be physical, psychological or material. This disorganisation may be brought about by aggression, by the use of force, consciously or unconsciously, but violence may also exist only from the point of view of the victim, without the aggressor having any intention of causing harm"<sup>5</sup>. Therefore, if we look at the above definitions, we can see that the act of violence is always bilateral, requiring the simultaneous existence of an aggressor and a victim. Another, less emphasised, characteristic of violent acts is that they are not always carried out with intent, and there are cases where only the victim feels assaulted and the aggressor does not intend to harm the person who feels assaulted. We will call these cases negligent violence.

In the literature, there are many classifications of violence. For example, in the paper "Gender inequality: invisible violence" acts of violence are classified into three categories:

1. "Direct violence where the authors include physical, sexual, social, economic and psychological violence, stating that this form of violence is the most easily observable;
2. Structural violence, which, according to the authors, is violence existing in the social, political and economic systems of society, including gender, age and social status inequalities;
3. Cultural violence, which refers to those aspects of culture that make violence 'normal', an acceptable way of responding to different conflicts, legitimising direct and structural violence"<sup>6</sup>.

Acts of violence can also be classified according to the type of social actor involved into:

- Personal violence, which refers to violence between an individual against another individual, or violence inflicted by an individual on himself;
- Collective violence, referring to revolutions, strikes, acts of terrorism and including war;
- Institutional violence, is generated by the beliefs and ideologies of a firm, such as its culture, religion or politics.

A further classification can also be made according to the circumstances in which the act of violence takes place:

- Endogenous or domestic violence, carried out within the family;
- Exogenous violence, that which takes place outside the family, in the street, in institutions, in schools.

Although there are many classifications of violence, we believe it is important to pay particular attention to the classification of violence according to its form. This is because, in the course of the study carried out, in addition to the problem of the human inability to define the notion of violence, we also encountered the human inability to identify the forms of violence, thus refusing the qualification of victim and hesitating to refer the matter to the competent authorities. Despite the many forms that violence can take, we consider the most important to be:

1. Physical violence - includes all forms of touch or physical contact that cause pain. Examples of physical violence are: punching, slapping, kicking, shoving, hitting a person against a wall or other object that causes pain to the person being assaulted, tying/mobilising/holding a victim, causing bruising, contusions, fractures, scratches, use

5 Eric Debarbieux, *La violence en milieu scolaire T.1: état des lieux*, 1996, Paris, ESF, pp. 45-46.

6 Ina Curic și Lorena Văețiși, *Inegalitatea de gen: violența invizibilă*, 2005, Editura Eikon, Cluj-Napoca.

of knives or firearms on a person. This time of violence is not limited to direct assault on the victim, but also includes the destruction of a person's property. According to a study on "Child Abuse and Neglect" conducted by Save the Children Organization, in 2021 in Romania 63% of children said they were beaten at home by their parents and only 38% of parents recognized physical abuse of children in the family, and 20% of them positively rated beating as a means of child rearing<sup>7</sup>. According to data published by the Filia Centre and taken by Serenity Clinica, "in 2017, in Romania, a number of 20,531 acts of assault and other violence committed between family members were reported to the police, a figure almost double the level indicated by a study conducted in 2003. The majority of perpetrators are adult males (92%) and the majority of victims are adult females (76%) and minors"<sup>8</sup>. Regarding physical violence outside the family, in 2016, in the first national survey on the phenomenon of bullying in Romanian schools launched by Save the Children, 3 out of 10 Romanian children said they had been threatened with beating or hitting by classmates<sup>9</sup>. In the Republic of Moldova, according to a study conducted by UNICEF Moldova, in 2019 about 1 in 10 adolescents aged 13 to 17 were victims of physical violence, most of them with injuries as a result of violence<sup>10</sup>, and a third of pupils aged 13 to 15 in Moldovan schools said they had been involved in at least one fight or had been harassed at least once in the past year or months<sup>11</sup>. Another UNICEF Moldova study shows that about 75% of Moldovan children have been subjected to some form of physical and psychological violence<sup>12</sup>. In 2012 the National Bureau of Statistics of the Republic of Moldova stated that "...studies show that every fourth woman in Moldova is subjected to some form of domestic violence, while the number of protection orders issued and enforced is increasing"<sup>13</sup>. Later, in 2021, the co-moderator of the morning program "Moldova at 7 o'clock", Dana Răileanu, stated in one of her articles that "73% of women in the Republic of Moldova suffer psychological, physical or sexual violence during their lives"<sup>14</sup>. An extremely serious problem, however, is that in reality the figures are much higher, this difference being caused by the victims' fear of speaking out, but also, as mentioned above, the victims' inability to define and identify acts of violence.

2. Psychological violence - The FILIA Centre associates this type of violence with "imposing will or personal control, causing tension and psychological distress in any way and by any means, demonstrative violence on objects and animals, through verbal threats,

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7 <https://www.salvaticopiii.ro/ce-facem/protectie/protectie-impotriva-violentei>, accesat la 24.08.2023.

8 <https://www.clinicaserenity.net/femeile-victime-ale-violentei-domestice-consecinte-si-abordare-psiho-logica/>, accesat la 24.08.2023.

9 <https://www.salvaticopiii.ro/ce-facem/protectie/protectie-impotriva-violentei>, accesat la 24.08.2023.

10 <https://www.unicef.org/moldova/rapoarte/interventii-in-cazurile-de-violenta-impotriva-copiiilor>, accesat la 25.08.2023.

11 <https://www.unicef.org/moldova/ce-facem/protectia-copilului/combaterea-violentei-impotriva-copiiilor>, accesat la 25.08.2023.

12 <https://www.unicef.org/moldova/ce-facem/protectia-copilului/combaterea-violentei-impotriva-copiiilor>, accesat la 25.08.2023.

13 Biroul National de Statistică al Republicii Moldova, în colaborare cu Programul Națiunilor Unite pentru Dezvoltare, Programul Națiunilor Unite pentru Femei și Programul Națiunilor Unite pentru Populație, *Violența în Familie împotriva Femeilor în Republica Moldova, și Avocații pentru Drepturile Omului, Implementarea legislației interne a Republicii Moldova: Raport privind drepturile omului*, 2012.

14 <https://moldova.europalibera.org/a/trei-din-patru-femei-din-r-moldova-sufera-pe-parcursul-vietii-de-violenta-psiho-logica-fizica-sau-sexuala/31139827.html>, accesat la 25.08.2023.

ostentatious display of weapons, neglect, control of personal life<sup>15</sup>, acts of jealousy, coercion of any kind, and other actions having a similar effect"<sup>16</sup>.

3. Verbal/emotional violence - refers to insults<sup>17</sup>, the threats and insults a victim endures. Emotional blackmail, continuous pressure on or deprivation of sleep and food, and defamation of a person in front of others can also be included in this category. A 2016 study by Save the Children Romania shows that "3 out of 10 children are repeatedly excluded from their peer group at school, 3 out of 10 children are threatened with beating or hitting by their peers, and 1 out of 4 children have been humiliated in front of their peers"<sup>18</sup>. Furthermore, the same study states that "73% of children say they have witnessed bullying in the school environment, 58% have witnessed bullying in their own classroom, 46% in their friend group, and 69% online"<sup>19</sup><sup>20</sup>. The biggest problem is, however, the fact that despite the fact that the law prohibits any form of violence, especially against children, according to another study conducted by Save the Children Romania during 2017, verbal violence is still tolerated and very often used as a pedagogical method in Romanian schools, "...86% of children said they are scolded when they make a mistake<sup>21</sup>, 33% were offended by teachers..."<sup>22</sup>. Thus, the teacher who is supposed to be the student's role model, ends up being the student's aggressor, which, we believe, becomes a determining factor in the children's subsequent behaviour<sup>23</sup>. Because, assuming that a child will always do what he sees the adult doing<sup>24</sup>, not what he tells him to do, it is obvious that, through the power of example, the child will become violent in turn with those over whom he feels he has authority. As far as the Republic of Moldova is concerned, as mentioned above, "73% of women in the Republic of Moldova suffer psychological, physical or sexual violence during their lifetime"<sup>25</sup>. Unfortunately, there is no statistical data clearly delineating the number of victims of verbal/emotional aggression, but certainly the number would exceed both in Romania and in the Republic of Moldova the rate of 90%, because, regardless of the environment in which we grew up, how tall or how short we were, blond, brown or brown-haired, no matter the colour of our eyes or the clothes we wore, if we look at our past, each of us has been at least once in our lives a victim of

15 A se vedea: Ion Ifrim, *Reflecții asupra infracțiunii de violare a secretului corespondenței*, Revista de Drept Penal, Anul XIX, nr. 1, ianuarie-martie 2012, pag. 127-129.

16 <https://centrulfilia.ro/ce-este-violenta-impotriva-femeilor/>, accesat la 26.08.2023.

17 A se vedea: Cristinel Costel Ghigheci, *Dacă sunt incriminate sau nu faptele e insultă și calomnie. Reflecții*, Revista de Drept Penal, Anul XVII, nr. 1, ianuarie-martie 2010, pag. 105-110.

18 <https://www.salvaticopiii.ro/ce-facem/protectie/protectie-impotriva-violentei>, accesat la 26.08.2023.

19 A se vedea: conf. univ. dr. Adrian-Milutin Truichici, *Infracțiuni comise prin intermediul sistemelor informatice*, Anul XVI, nr.4, octombrie-decembrie 2009, pag. 60-66.

20 <https://www.salvaticopiii.ro/ce-facem/protectie/protectie-impotriva-violentei>, accesat la 26.08.2023.

21 A se vedea: lector univ. dr. Gheorghe Iulian Ioniță, *Infracțiunea de rele tratamente aplicate minorului*.

Concept și drept comparat, Revista de Drept Penal, Anul XiX, nr. 1, ianuarie-martie 2012, pag. 142-150.

22 <https://www.salvaticopiii.ro/ce-facem/protectie/protectie-impotriva-violentei>, accesat la 26.08.2023.

23 A se vedea: prof. univ. dr. Ioan Lascu, *Răspunderea penală a minorilor în viziunea noului Cod Penal*, Revista de Drept Penal, Anul XVII, nr. 4, octombrie- decembrie 2010, pag. 38-44; prof. univ. dr. Petre Dungan, *Regimul răspunderii penale a minorului în noul Cod Penal*, Anul XVIII, nr. 4, octombrie- decembrie 2011, pag. 52-57.

24 A se vedea: lector univ. dr. Eufemia Vieriu, *Considerații generale privind prevenirea criminalității*, Revista de Drept Penal, Anul XX, nr. 1, ianuarie-martie 2013, pag. 123-130.

25 <https://moldova.europalibera.org/a/trei-din-patru-femei-din-r-moldova-suferă-pe-parcursul-vieții-de-violență-psihologică-fizică-sau-sexuală/31139827.html>, accesat la 26.08.2023.

verbal/emotional violence at home, on the street, in traffic, at school or even in an institution, whether public or private.

4. Sexual violence - includes all types of sexual contact deemed unwanted by a person, but also those in respect of which the person lacks the capacity to give validly formed consent. Sexual contact without consent is labelled as rape under both Moldovan and Romanian law. There are two types of rape. On the one hand, we are talking about marital rape, in which there is a marriage relationship between the aggressor and the victim, and on the other hand, we are talking about general rape, in which there is no marriage relationship between the aggressor and the victim. Sexual violence occurs when the victim is forced, threatened or coerced into sexual intercourse with the perpetrator, but also when the sexual act takes place while the victim is unconscious or, although conscious, is afraid to express her disagreement. Sexual violence also includes sexual acts where one partner forces the other partner to have unprotected sex. Another common form of sexual abuse is blaming the victim's sexuality and calling her sexually degrading names, or partially or totally undressing the abuser in front of the victim. An American study shows that most sexually abused women have difficulty getting married or never marry at all. At the European level "Analysis of specific types of violence shows that in 2014, 1 in 10 women reported being a victim of sexual violence and 1 in 20 were victims of rape"<sup>26</sup>. According to the study "Women at risk in the Republic of Moldova" "30% of young women and girls aged 16-19 have suffered from sexual violence"<sup>27</sup>. According to the ONU Information Centre for Romania, in the course of their lives, about 20% of women in Romania are victims of attempted rape or even rape. According to data presented by the Romanian Police, "in the first five months of 2008 there were 21.3% more rapes followed by the death of the victim than in the same period of 2007, more than 50% of them in rural areas"<sup>28</sup>. According to a news report published by DIGI24 in May 2022, "In Romania, every day, a child is raped or sexually assaulted. Every three days, a child falls victim to human trafficking"<sup>29</sup>. And 85% of complaints of sexual violence against children are dismissed for lack of evidence"<sup>30</sup>. According to a survey conducted in December 2019 - January 2020 with 1594 Romanian children between 8 and 18 years old, 40% of sexually abused children told their parents, only 30% of children went to the police and 20% preferred to tell only their friends about what happened<sup>31</sup>. These data clearly show that

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26 Agenția pentru Drepturi Fundamentale a Uniunii Europene (FRA), Violence against women: an EU-wide survey. Main results report (Violența împotriva femeilor: o anchetă la nivelul UE. Raport privind principalele rezultate), 2014; Ancheta FRA referitoare la violența împotriva femeilor se bazează pe interviuri față în față cu 42 000 de femei din întreaga UE. Documentul prezintă cea mai cuprinzătoare anchetă efectuată la nivel mondial cu privire la experiențele femeilor în materie de violență.

27 IMAS inc., Winrock International, 2005, Femeile în situație de risc în Republica Moldova. Studiu național reprezentativ [http://www.atnet.md/public/46/en/Women%20At%20Risk\\_eng.pdf](http://www.atnet.md/public/46/en/Women%20At%20Risk_eng.pdf), pag. 63.

28 <https://www.politiaromana.ro>, accesat la 27.08.2023.

29 A se vedea: Gheorghe Dan Botez, Traficul de persoane. Cooperarea judiciară internațională, Revista de Drept Penal, Anul XVII, nr. 3, iulie-septembrie 2010, pag. 75-84; Florea Pasca, Trafic de persoane. Arestare preventivă, Revista de Drept Penal, Anul XVII, nr. 3, iulie-septembrie 2010, pag. 93-97; Maria Luiza Hrestic, Prevenirea și combaterea traficului de persoane, Revista de Drept Penal, Anul XVII, nr. 2, aprilie-iunie 2010, pag. 124-137.

30 <https://www.digi24.ro/stiri/actualitate/romania-tara-copiiilor-agresati-sexual-un-copil-este-abuzat-in-fiecare-zi-ar-trebui-sa-ne-produca-un-soc-un-cutremur-1929601>, accesat la 27.08.2023.

31 <https://worldvision.ro/wp-content/uploads/2021/07/Sondaj-cu-privire-la-violenta-sexuala-asupra-copiiilor.pdf>, accesat la 27.08.2023.

statistics on sexual violence against children and women show much more optimistic data compared to reality, this is because although victims are promised anonymity, their fear does not allow them to speak out.

5. Negligent violence - according to Art. 94, paragraph 2 of Law 272/2004 on the Protection of Children against Abuse or Neglect "Neglect of a child means the omission, voluntary or involuntary, of a person who has the responsibility for the upbringing, care or education of the child to take any action required to fulfil this responsibility, which endangers the life, physical, mental, spiritual, moral or social development, bodily integrity, physical or mental health of the child and may take several forms: Food, clothing, hygiene neglect, medical neglect, educational neglect, emotional neglect or child abandonment/family abandonment, which is the most serious form of neglect"<sup>32</sup>. Neglect violence can manifest itself in many forms, such as: food neglect, clothing neglect, hygiene neglect, medical neglect, educational neglect, emotional neglect, and child abandonment/family abandonment. In a survey carried out by Save the Children Romania "79% of the professionals interviewed in the research identified neglect as the most common form of abuse among children under 11 years of age"<sup>33</sup>. We note that specialists show that the situation is quite serious when it comes to the frequency with which violence through neglect is encountered in everyday life, but an even bigger problem in this context is the fact that a large part of the population of Romania and the Republic of Moldova still does not consider violence through neglect to be a form of violence, which makes the situation even more difficult. Another form of neglect/negligent violence occurs when the perpetrator applies a form of violence to the victim without intending to do so, by accident or not knowing that his actions fall under one of the forms of violence.

6. Economic violence - occurs when the perpetrator decreases the amount of financial resources held by the victim, and with it the victim's level of autonomy. This may also include cases where the perpetrator constantly checks the financial resources held by the victim and restricts access to money, possessions, products and services that the victim could purchase with money. In many cases of economic violence the perpetrator prohibits the victim from taking up employment or forces the victim to give up work, thus keeping the victim in a continuous state of financial dependence on the perpetrator. According to a survey conducted in 2019 by the National Agency for Equal Opportunities for Women and Men on a sample of 6731 people, 2.2% of the participants were victims of economic violence<sup>34</sup>, however, there is a high likelihood that, as with other forms of violence, the victims were afraid to tell the truth, so the number of victims could be much higher than the one resulting from this research.

7. Social violence - is manifested by psychological violence, but this time in passive form. This category includes cases where the victim is isolated from society, friends or even family and is continuously controlled and monitored, with the perpetrator seeking to reduce or even suppress the victim's social relationships, and the victim loses access to information or assistance. According to the same study conducted in 2019 by the National

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32 Lege nr. 272 din 21 iunie 2004, Republicată, privind protecția și promovarea drepturilor copilului. Emitent: Parlamentul României. Publicată în: Monitorul Oficial nr. 159 din 5 martie 2014.

33 Salvați Copiii România „Analiza sistemului de identificare și referire a abuzului în cazul copiilor cu vârsta sub 11 ani”, Cercetare socială calitativă, București, 2018, pag.52.

34 <https://anes.gov.ro/wp-content/uploads/2020/02/SEM-I-2019-STUDIUL-NAȚIONAL-VD.pdf>, accesat la 28.08.2023.

Agency for Equal Opportunities for Women and Men on a sample of 6731 people, 1.2% of participants said they had been victims of social violence<sup>35</sup>.

Despite the fact that violence is criminalised under both Romanian and Moldovan law, it continues to be taught as a "compulsory subject" in schools in both countries and beyond. In the novel "Mara" by Ioan Slavici, after the wedding, Nițl turns into a violent husband, indifferent and uncaring towards Persida, thus we can highlight several forms of violence present, such as physical, verbal, psychological and social violence. In the novel "Ion" by Liviu Rebreanu, Ana is the victim of both physical and sexual violence when she is raped by Ion. Ion's aggressor ends up being the victim when, out of jealousy, George kills Ion. These "problems" are not just found at the national level. Feodor Dostoevsky depicts in his work "The Idiot" the murder of Lev Nikolaevich Myshkin's fiancée, whom the news of her death also turns into a victim. In the same author's Crime and Punishment, the violence is driven by the character's guilty conscience. And the list of works containing violence goes on. It is obvious that we cannot exclude these valuable works from the school curriculum or from libraries simply because they contain acts of violence, but we can certainly revise the way we approach the content of each book. Thus, as well as analysing the characters, teachers could also consider the legality and morality of the violence they commit.

## 2. COMPATIBILITY OF THE LEGISLATION OF THE REPUBLIC OF MOLDOVA WITH THAT OF ROMANIA IN THE FIELD OF VIOLENCE

While the Spartans saw violence as an important male trait, 21st century society not only no longer tolerates it, but also fights an ongoing battle to identify and criminalize all forms of violence. The Charter of Fundamental Rights of the European Union is one of the pieces of legislation which, in Article 3(1), Title 1, criminalises violence. It states that "Everyone has the right to physical and mental integrity"<sup>36</sup>. Victims are also protected by Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) which provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime<sup>37</sup>, but also by 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/JAI<sup>38</sup>. These minimum rules are binding on the present Member States, but not restrictive, so that they can supplement the transposition into national law with rules ensuring an even higher level of protection. Violence in all its forms is also prohibited at European level by the following legislation: Directive 2011/99/EU of the European

<sup>35</sup> <https://anes.gov.ro/wp-content/uploads/2020/02/SEM-I-2019-STUDIU-NAȚIONAL-VD.pdf>, accesat la 28.08.2023.

<sup>36</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF>, accesat la 29.08.2023.

<sup>37</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_2&format=PDF), accesat la 29.08.2023.

<sup>38</sup> <https://anes.gov.ro/wp-content/uploads/2018/07/Directiva-2012.29eu-protectia-victimelor.pdf>, accesat la 29.08.2023.



Parliament and of the Council of 13 December 2011 on the European protection order<sup>39</sup> establishing a mechanism for the mutual recognition by Member States of protection measures in the area of crime; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings, and protecting its victims<sup>40</sup>; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse, sexual exploitation of children and child pornography<sup>41</sup> addressing the specific needs of particular categories of victims of trafficking in human beings, child sexual abuse, sexual exploitation and child pornography and Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism<sup>42</sup> which classifies terrorism as a threat to the free exercise of human rights. One of the most recent actions taken by the European Union to prevent and combat violence is the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, which "includes measures in the following areas: criminalisation of offences<sup>43</sup> and the establishment of sanctions in relation thereto; protection of victims and access to justice; victim support; prevention; coordination and cooperation"<sup>44</sup>.

As far as national regulations are concerned, both in the Republic of Moldova and in Romania violence is recognised as a crime against life and health. The most serious consequence of an act of violence is the death of the victim, and unfortunately, as we have also seen above, the statistics show that there are many cases in which victims of violence end up being killed. Murder is regulated by both Moldovan and Romanian legislation. Thus, in Chapter II, Article 145(1) of the Criminal Code of the Republic of Moldova<sup>45</sup> states that „Murder of a person shall be punishable by imprisonment for a term of 10 to 15 years”. In the same article, paragraph 2 (e) of the same law also specifies, among other things, that „Murder committed knowingly against a minor or a pregnant woman or taking advantage of the victim's known or obvious helplessness, which is due to old age, illness, disability or other factor, shall be punishable by imprisonment for a term of 15 to 20 years or life imprisonment”. Comparing the two legislations, we observe that the legislation of the Republic of Moldova is slightly more permissive than that of Romania. In addition to the fact that Romania sets a maximum penalty of 5 years higher than in the Republic of Moldova in both general and special cases, the Romanian legislator also establishes that the offender will be prohibited from exercising certain rights. In my opinion, this last aspect, under the conditions of a correct legal interpretation, is extremely important, which, if applied correctly, would contribute to an even greater reduction in acts of violence. Also, the Romanian legislator establishes in both Article 188 (2) and Article 189 (2) that „Attempt shall be punished”, an aspect ignored by the Criminal Code of the Republic of Moldova. At first sight, this omission does not seem to be of any importance, especially

<sup>39</sup> <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32011L0099>, accesat la 29.08.2023.

<sup>40</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:ro:PDF>, accesat la 29.08.2023.

<sup>41</sup> <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32011L0093>, accesat la 29.08.2023.

<sup>42</sup> <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:02002F0475-20081209&from=ES>, accesat la 29.08.2023.

<sup>43</sup> A se vedea: prof. univ. dr. George Antoniu, *Noul Cod Penal. Reflecții asupra infracțiunilor contra persoanei*, Revista de Drept Penal, Anul XX, nr. 4, octombrie-decembrie 2013, pag. 9-25.

<sup>44</sup> <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52022PC0105>, accesat la 29.08.2023.

<sup>45</sup> [https://www.legis.md/cautare/getResults?doc\\_id=109495&lang=ro](https://www.legis.md/cautare/getResults?doc_id=109495&lang=ro), accesat la 30.08.2023.

for the Moldovan legislator. However, if we start from the premise "Dimidium facti qui coepit habet"<sup>46</sup>, we are aware that Moldovan law, in the first instance, "supports" criminals and indicts them only when things become irreversible. Murder in a state of affect, on the other hand, is regulated only by the Criminal Code of the Republic of Moldova, which stipulates in Article 146 that "murder committed in a state of sudden affect, caused by acts of violence or serious insults or other illegal or immoral acts of the victim, shall be punishable by imprisonment for up to 5 years". But the question we ask in this situation is "How does one actually establish that state of affection?" Especially in the case of a dead victim.

Both legislations also criminalise serious intentional harm to body integrity or health<sup>47</sup>, medium intentional harm to body integrity or health<sup>48</sup>, torture, inhuman or degrading treatment<sup>49</sup>, in the Republic of Moldova or beating or other violence<sup>50</sup>, bodily harm, blows<sup>51</sup> or injuries causing death<sup>52</sup>, in Romania. In such cases, the penalties set by the Romanian state start from fines or 3 months' imprisonment and go up to 12 years' imprisonment, while in the Republic of Moldova the penalty can be 200-240 hours' community service or 5 to 15 years' imprisonment. In this situation, unlike in the previous case, it seems that the legislation of the Republic of Moldova is much stricter, however, it is important to mention that in such situations it is very important how the law is interpreted and applied by the competent institutions.

As far as violence against minors is concerned, in the Republic of Moldova it is regulated by Article 147 of the Criminal Code, which deals with pre-child murder, and in Romania it is regulated by Article 197 of the Criminal Code, which deals with ill-treatment of minors, and by Article 200, which regulates the murder or injury of a newborn child committed by the mother<sup>53</sup>.

The Penal Code also covers domestic violence, but this time complemented by other national laws. Thus, while Article 201 of the Criminal Code of the Republic of Moldova lists actions considered domestic violence and establishes penalties of up to 15 years' imprisonment depending on the seriousness of the offence, Article 199(1) of the Romanian Criminal Code merely states that "If the offences referred to in Articles 188, 189 and 193-

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<sup>46</sup> Sermonvm, Q. Horati Flacci, I, 2, 14, Liber Secvndvs.

<sup>47</sup> Articolul 151, Codul Penal al Republicii Moldova nr. 985, din 18.04.2002, Publicat la 14.04.2009 în Monitorul Oficial Nr. 72-74 art. 195.

<sup>48</sup> Articolul 152, Codul Penal al Republicii Moldova nr. 985, din 18.04.2002, Publicat la 14.04.2009 în Monitorul Oficial Nr. 72-74 art. 195.

<sup>49</sup> Articolul 166, Codul Penal al Republicii Moldova nr. 985, din 18.04.2002, Publicat la 14.04.2009 în Monitorul Oficial Nr. 72-74 art. 195.

<sup>50</sup> Articolul 193, Codul Penal al României din 17 iulie 2009, Legea nr. 286/2009, Publicat în Monitorul Oficial nr. 510 din 24 iulie 2009.

<sup>51</sup> Articolul 194, Codul Penal al României din 17 iulie 2009, Legea nr. 286/2009, Publicat în Monitorul Oficial nr. 510 din 24 iulie 2009.

<sup>52</sup> Articolul 195, Codul Penal al României din 17 iulie 2009, Legea nr. 286/2009, Publicat în Monitorul Oficial nr. 510 din 24 iulie 2009.

<sup>53</sup> A se vedea: Dan Eugen Ioan, *Elemente de drept comparat cu privire la infracțiunea de pruncucidere*, Revista de Drept Penal, Anul XVII, nr. 4, iulie-septembrie 2010, pag. 149-153; Daniel Soare, *Subiectul pasiv al infracțiunii de ucidere ori vătămare a nou-născutului săvârșită de către mamă. Aspecte de drept comparat privind momentul în care începe viața*, Revista de Drept Penal, Anul XXI, nr. 1, ianuarie-martie 2014, pag. 152-159; conf. univ. dr. Petre Dungan, *Pruncucidere. Reflecții*, Revista de Drept Penal, Anul XVI, nr. 1, ianuarie-martie 2009, pag. 48-50.

195 are committed against a family member, the special maximum penalty provided for by law shall be increased by one fourth". It is important to note that, in the case of certain forms of domestic violence, the competent authorities may report the matter to the competent authorities, which means that "criminal proceedings may also be initiated ex officio". In the fight against domestic violence in Romania, Law No 217 of 22 May 2003 on preventing and combating domestic violence<sup>54</sup> was also adopted, and in the Republic of Moldova Law No 45 of 1 March 2007 on preventing and combating domestic violence was adopted.

As in other cases of violence, both countries have tried to intervene in the prevention and combating of sexual violence by regulating certain aspects related to this subject in national criminal codes. Thus, Chapter IV of the Criminal Code of the Republic of Moldova regulates offences relating to sexual life, establishing in Article 171 that rape, depending on the circumstances in which it took place, is punishable by imprisonment from 3 to 20 years. In the same sense, the Romanian Criminal Code regulates in Chapter VIII Offences against sexual freedom and integrity, establishing penalties from 5 years to 18 years "if the act resulted in the death of the victim", also prohibiting the exercise of certain rights.

Other types of actions involving certain forms of violence against victims are robbery or theft<sup>55</sup>, mugging<sup>56</sup>, extortion<sup>57</sup> and hooliganism<sup>58</sup>.

## CONCLUSION

Social change has also led to an evolution in violence. With the passage of time there has been an excessive increase in the diversity of the phenomenon of human violence, which has taken on new forms, much more diverse than those seen in previous centuries. It is therefore important to stress that the current definition of violence does not always correspond to its evolution over time. While violence remains a constant threat to human security and integrity over time, affecting the fulfilment of personal needs, including those of safety and security in Maslow's pyramid, over time it has taken different forms, evolving from the physical violence encountered in wars to the emotional violence encountered today in families, on the streets and in schools. However, the act of violence still involves the exercise of a form of superiority and domination over a person.

The paper aims to highlight the extreme vulnerability of women and children to violence, regardless of its context. A significant problem is the impossibility or difficulty for victims to define and identify acts of violence, which contributes to under-reporting.

<sup>54</sup> Publicat în Monitorul Oficial nr. 948 din 15 octombrie 2020.

<sup>55</sup> Articolul 187, Codul Penal al Republicii Moldova nr. 985, din 18.04.2002, Publicat la 14.04.2009 în Monitorul Oficial Nr. 72-74 art. 195, respectiv Articolele 228-232, Codul Penal al României din 17 iulie 2009, Legea nr. 286/2009, Publicat în Monitorul Oficial nr. 510 din 24 iulie 2009.

<sup>56</sup> Articolul 188, Codul Penal al Republicii Moldova nr. 985, din 18.04.2002, Publicat la 14.04.2009 în Monitorul Oficial Nr. 72-74 art. 195, respectiv Articolele 233-237, Codul Penal al României din 17 iulie 2009, Legea nr. 286/2009, Publicat în Monitorul Oficial nr. 510 din 24 iulie 2009.

<sup>57</sup> Articolul 189, Codul Penal al Republicii Moldova nr. 985, din 18.04.2002, Publicat la 14.04.2009 în Monitorul Oficial Nr. 72-74 art. 195.

<sup>58</sup> Articolul 287, Codul Penal al Republicii Moldova nr. 985, din 18.04.2002, Publicat la 14.04.2009 în Monitorul Oficial Nr. 72-74 art. 195. A se vedea: Gheorghe Mărgărit, *Ultraj. Furt*, Revista de Drept Penal, Anul XVI, nr. 4, octombrie-decembrie 2009, pag. 170-172.

At the same time, victims' fear of the perpetrator tends to further reduce the rate of reporting to the authorities.

The various classifications and forms of violence, as well as concrete examples and relevant statistics from Romania and the Republic of Moldova, presented in this paper, are intended to highlight the extent and seriousness of the violence-related problems encountered in both countries. They are intended to suggest that violence education should be more effective, given the complexity and diversity of the phenomenon. At the same time, the need to address the phenomenon of violence in an integrated way and through its various forms is stressed in order to facilitate understanding and awareness of this serious problem in society.

In the midst of a need to act, contemporary society has taken a firm stance against violence in all its forms. The fundamental principles of the European Union, such as those reflected in the Charter of Fundamental Rights, the Treaty on the Functioning of the European Union and the specific Directives, reaffirm individual rights, including the right to physical and mental integrity. These documents provide protection for victims and set minimum standards for combating violence at European level. They highlight the efforts of the European Union and the Member States or candidate countries to improve legislation and to step up cooperation in combating various forms of violence, including violence against women and violence against minors. However, despite legislative progress, there are still uncovered or insufficiently regulated issues such as emotional, economic or social violence, highlighting the continuing need for revision and improvement of legislation to address violence issues as effectively as possible.

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