



Asociația Dreptate și Educație Pentru Toți - A.D.E.P.T.

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To:

Members of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

From:

Association for Justice and Education for All – A.D.E.P.T.

Subject:

Observations regarding legislative gaps in the transposition of the Istanbul Convention concerning the protection of child victims and child witnesses of domestic violence in Romania

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Dear Members of GREVIO,

The Association for Justice and Education for All – A.D.E.P.T. has as its mission the promotion of children's fundamental rights and equal opportunities, as well as legal education for children and the training of professionals working with children, including those who are victims of various forms of abuse. Our association is deeply committed to supporting minor victims of violent crimes and children orphaned as a result of parental homicide, as well as to improving access to education, culture, and the development of critical thinking among children and young people.

Although recently established, our Association's team has solid and relevant experience in the social and legal fields. The President of the Association was for almost 14 years a founding member and nearly 9 years Vice-President of the NGO ANAIS Association, which implemented numerous projects aimed at preventing gender-based violence and providing legal assistance to victims of domestic violence. Together with the current Vice-President of our organization, a former magistrate, she has been actively involved in various working groups for amending legislation and has contributed to significant legal reforms concerning the protection of victims of crimes, domestic violence, and sexual abuse of minors.

Through this letter, we wish to draw your attention to a series of issues encountered in our work supporting victims of violent and domestic crimes, with a particular focus on **child victims**.

Romania has not fully transposed the **Istanbul Convention** from the perspective of protecting child victims and child witnesses to violence committed against a parent or other family members, at least in the following respects:

1. **Romania has not established as an aggravating circumstance the commission of an offense “in the presence of a minor,”** not even in cases of extreme violence, such as when children witness the killing of their mother or another family member. This omission leads to the paradoxical situation in which, if the victim survives an attempted murder, the children who witnessed the extremely violent and terrifying attack – with long-term, even lifelong, traumatic effects – cannot become parties to the criminal proceedings. Their position and needs remain unknown to the court judging the attempted murder, they have no independent legal representation, cannot obtain damages from the offender for their own suffering, and are not entitled to state financial compensation.
2. **Witnessing violence against the mother or another family member is not explicitly recognized as ill-treatment.** The offense of “ill-treatment of a minor” under Article 197 of the Criminal Code requires proof of “serious endangerment of the child’s physical, emotional, or moral development.” Courts often ignore that the impact of traumatic events may not be immediately visible or measurable and may not be easily established through psychological assessment or expert evaluation conducted during the criminal investigation.
3. **Court decisions regarding ill-treatment of minors are not published, even in anonymized form,** following a decision by the Superior Council of Magistracy. Consequently, it is difficult to determine what acts and degrees of severity are considered by courts and prosecutors as constituting ill-treatment. From the few cases where such judgments have been published in the Rejust system (usually because other serious offenses such as homicide or attempted homicide were also investigated), it appears that ill-treatment is prosecuted only in cases involving extreme violence resulting in death or severe injury. By contrast, when children are subjected to physical and psychological violence or witness violence against other family members, courts tend to convict only for “battery and other acts of violence” under Article 193 of the Criminal Code, not for ill-treatment.

For instance, in one case, the Ploiești Court of Appeal (Criminal Section and for cases involving minors and family matters), Decision no. 1,315 of December 5, 2022, acquitted the defendant of ill-treatment of his two children, aged 6 and 5. The proven facts showed that the father, who owned three stun devices, had caused physical suffering to his children by shocking them with the devices, and that the children had also witnessed their father applying electric shocks to their cousins (aged 10 and 12) and to their mother, whom he repeatedly beat and electrocuted with a stun device. Despite this, the court ruled that the offense of ill-treatment was not proven, disregarding the lasting psychological trauma experienced by the children.

Our Association contributed to drafting a legislative proposal entitled “**Law on the Prevention and Combat of Femicide and Preceding Acts of Violence,**” which seeks to introduce the aggravating circumstance “the act is committed in the presence of a minor” both for aggravated murder and for other violent offenses, as well as to criminalize as ill-treatment the repeated exposure of a child to violence against another family member.

4. **In cases of homicide of one parent (typically the mother) by the other, or when the killer is entitled to inherit from the victim, criminal courts do not rule on the killer’s civil unworthiness to inherit.** As a result, orphaned children must initiate separate civil proceedings to establish the murderer’s unworthiness, a process that also prevents “special orphans” from receiving a full survivor’s pension, since part of it remains allocated to the unworthy parent until a civil court decision is issued. By contrast, Italy amended its Penal Code

in 2018 to suspend the killer's right to a survivor's pension, allocating the entire amount to the children, with the possibility of restitution only if the accused is acquitted.

Romania has not effectively addressed conflicts of interest between the non-abusive parent and the child victim. In cases of physical or sexual violence against children, situations arise in which the non-abusive parent:

- a) fails to join the proceedings as a civil party against the abuser;
- b) makes only minimal or formal claims for damages;
- c) withdraws or reduces civil claims initiated by the prosecutor on behalf of the child.

Moreover, in some cases where police determined that the conditions for issuing a provisional protection order (OPP) were met, the non-abusive parent opposed the order or refused the use of the electronic monitoring device, rendering monitoring impossible. Consequently, in many cases, no civil action is filed in criminal proceedings where the child is a direct victim of physical or sexual violence.

Our Association has encountered cases of child victims of sexual abuse or children orphaned by femicide where neither the legal guardian, nor the prosecutor, nor the victim's lawyer filed a civil claim. We therefore believe GREVIO should issue a clear recommendation emphasizing prosecutors' obligation to act ex officio to represent minor victims' civil interests, regardless of the legal guardian's stance, both in cases where children are direct victims and where a parent (most often the mother) was killed as a result of domestic violence.

6. **The definition of "family member" in Article 177 of the Criminal Code is far narrower** than that in the Istanbul Convention or Law no. 217/2003. It excludes former spouses, partners who do not cohabit, and relatives of the victim (covering only those of the aggressor). As a result, crimes committed against these persons are not treated as domestic violence offenses and cannot be prosecuted ex officio.
7. **Romania has not abolished the requirement for a prior complaint (plângere prealabilă)** in cases of rape committed against an adult victim or a minor over 16 years old, except when the perpetrator is a family member (as narrowly defined in Article 177) or holds a position of authority over the victim. Thus, although rape is an imprescriptible offense, a paradox remains: if a victim fails to file a complaint within three months, the offense can never be prosecuted. Our Association contributed to drafting the "Law on the Prevention and Combat of Femicide and Preceding Acts of Violence," which proposes repealing paragraphs (5) of Articles 218 and 219 of the Criminal Code.
8. **Forensic institutions refuse to collect biological or forensic evidence (such as semen, saliva, skin cells, or hair) at the victim's request in sexual assault cases,** unless ordered by a prosecutor or police officer. This practice leads to the loss of crucial evidence and humiliates victims, who may be forced to wait many hours before examination. This situation resulted from amendments made by Joint Order no. 1434/687/C/2023 of the Ministers of Justice and Health, which eliminated not only the "virginity testing" provision (rightly abolished) but also all forensic examinations upon request in rape and sexual assault cases. Consequently, victims who still have time to file a complaint (within the three-month legal period) are left without any biological evidence, making prosecution almost impossible.
9. **Victims of domestic or sexual violence face obstacles when trying to file complaints electronically,** as the Criminal Procedure Code requires an electronic signature for validity (Article 289(5)). Most police units lack public email addresses or refuse to register unsigned complaints. This requirement discourages victims from reporting. The Bucharest Prosecutor's

Office had to issue a public statement clarifying that email complaints would be accepted in the recent SNSPA sexual abuse case involving university professors.

10. **There is a long delay between the issuance of provisional protection orders (OPP) and the actual installation of electronic monitoring devices**, which can discourage victims from requesting monitoring. The average waiting time in police stations (around 6 hours) exposes victims to secondary victimization and even potential contact with their abuser.
11. **There are no clear legal procedures identifying the national authority responsible for the removal of illegal online material** containing child sexual abuse content, “revenge porn,” or other intimate images that violate victims’ privacy. Nor are there clear protocols obliging institutions such as ANCOM or CNA to promptly notify prosecutors, preserve digital evidence, and ensure that perpetrators can be identified and prosecuted. The creation of such content, particularly when involving minors, often occurs within family contexts and must be recognized as a severe form of domestic violence when committed by a family member or guardian.
12. **Complex forms of domestic violence are not recognized by police or courts** when intersecting with other serious crimes such as human trafficking, child trafficking, child pornography, slavery, or forced labor. For example, trafficking cases involving family members as perpetrators or “loverboy” recruitment are often misclassified as lesser offenses (e.g., pimping). Prosecutors and judges often fail to understand the total control exerted by traffickers, including when the trafficker is also the victim’s partner or father of her child, maintaining coercion through parental rights.

Nevertheless, we wish to commend the initiative of the **National Agency for Equal Opportunities between Women and Men (ANES)** for establishing a working group to amend Law no. 217/2003 on preventing and combating domestic violence.

Among the key legislative proposals advanced were:

- the introduction of legal provisions for the protection of “special orphans,” a category currently lacking any specific legal framework;
- the creation of the role of **victim support assistant**, a person designated to guide and assist victims throughout their interactions with state institutions;
- extending the possibility to issue provisional and full protection orders (OPP/OP) to prevent and combat **forced marriages**, particularly to protect vulnerable children.

These legislative proposals represent a significant step toward strengthening protection and support mechanisms for victims in high-risk situations. However, the ANES initiative must be firmly supported, especially considering that some line ministries – although represented in the working group – are currently refusing to give favorable opinions on the proposed amendments.

It is essential that this legislative reform process receives the full support of all relevant institutions so that the real and effective protection of victims of violence and vulnerable children becomes a national priority.

President

Lawyer GIULIA CRIȘAN