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**Istanbul Convention, are we ready?
A window of opportunity for ending
domestic violence in Romania**

Comparative study tackling the alignment of Romania with the standards of the Istanbul Convention on preventing and combating violence against women and domestic violence

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Abstract

Romania signed in 2014 the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, shortly, the Istanbul Convention. This exploratory study is looking into the challenges that Romania must tackle in order to align with the international standards imposed by the Istanbul Convention in its process for ratification. To do so, firstly, the author detects the evolution of the legal definition and the manifestations of violence against women and domestic violence at international and European level. Then, the situation of the Romanian women is addressed, overviewing the social and economic context in Romania, the gender inequality and the situation of Romanian women made victims of domestic violence. In the last part, the Romanian legislation is analysed in depth, and compared with the provision of the Istanbul Convention and the Spanish legislation, seen as an example of good practice. The main finding highlights the fact that the Romanian Law preventing and combating violence in the family must amend its provisions, firstly, by framing domestic violence within the Istanbul Convention approach. The condition for victim and perpetrator residing together should be eliminated and the rights of the victims should be extended and detailed elaborated. In addition, an official body dealing with gathering data analyse and disseminate on the causes and the consequences of domestic violence must be putted in place. The law should stipulate the coordination with the security forces, as a main stakeholder for enforcing the law. The civil and criminal sanctions must be addressed within the law, facilitating the understanding of the measures, since the judiciary system underwent serious reforms in the recent years. Moreover, the aggravating circumstances must be aligning with the provisions of the Istanbul Convention. A chapter of the law should elaborate on the preventing measures in an exhaustive manner. As a general remark, although a series of issues must be addressed in order to stand up to the international standards regarding domestic violence, still, Romania is facing a great opportunity that must be seized, namely the Istanbul Convention, to end domestic violence.

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List of Abbreviations

CEDAW	Committee of eliminating all forms of Discrimination against Women
DV	Domestic Violence
EIGE	European Institute on Gender Equality
EU	European Union
FRA	European Union Agency for Fundamental Rights
SRVAW	Special Rapporteur on Violence against Women
VAW	Violence against Women
VF	Violence in the Family
UN DEVAW	United Nations Declaration on the Elimination of Violence against Women

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During my staying in Maastricht, along with a personal motivation to work on women’s rights, I have developed a different motivation towards my thesis: the desire to honour my teacher. The effort and the energy invested in this study are because of these two reasons. The idea of comparing the Istanbul Convention with Romania belongs to Ingrid, as well as her confidence that I can manage to do so. She took me out of my comfort zone, allowing seeing domestic violence from a different perspective. I thank you, Ingrid, for patiently orienting me in the legal world. Thank you because I have learnt a little more about myself and a little more about the world.

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To Sara Tapia Hernandez, my mentor and friend

To my children, Abel and Alexia, I wish you to always follow your dreams, no matter the social pre-established norms and expectations, fears and insecurities...

1 INTRODUCTION

1.1 Justification of the project

In 2014, the results of the European Union Agency for Fundamental Rights (FRA) on violence against women indicate the magnitude of violence thereby alarming the public, law-makers and professionals of this filed by providing empirical evidence of this under-reported human rights abuse. In the FRA study 42.000 women across all 28 EU Member States have been interviewed. 22% of the women, who, by the time of the research, were engaged in a relationship with a man, reported that they have suffered from physical and/or sexual violence. One in three women have experienced some forms of physical and/or sexual assault from the age 15, while 8% those polled stated that they have been victims of such violence in the last 12 months (which corresponds to a projection for the entire EU of approximately 13 million women). Furthermore, psychological violence is widespread. 43% stated that they have experienced some forms of psychological violence by their current or former partner.¹ All forms of violence may it be stalking, sexual harassment, being abused by the partner or other forms of violence have an intense negative impact on the ability of women and girls to fully enjoy their human rights. Moreover, all women, including myself, are at risk to suffer from one or more types of violence against women, regardless of class, age, ethnicity, and level of education or any other kind of distinctive element, along their life cycle.

The outcome of the FRA study only highlighted a reality that is already acknowledged. Focusing on domestic violence, one only has to observe reality through more sensitive lenses in order to perceive violence, whether it is hidden behind the fear of a woman not to upset her partner or by listening to our female neighbour screaming and crying. In essence, these observations of the reality represent the reason of this study, a comparative analysis of the Romanian legislation with the Istanbul Convention and Spanish legislation, dealing with prevention and combating of domestic violence.

¹ FRA. European Union Agency for Fundamental Rights (2014); Violence against women: an EU survey. Results at a glance. P.15

When addressing the “why” of this research, I have to present my personal motivation. As a Romanian, and a woman, I grew up in a society in which domestic violence was accepted as a private matter, an issue that the partners should resolve, excluding the societal actors as passive witnesses of the violent behaviour. Although things have changed since my childhood in terms of legislative improvements and increased awareness of the negative effects of domestic violence on women, children and the society as a whole, there are still a number of important challenges that need to be addressed.

An additional reason of this study is the fact that Romania is facing a widespread and systemic problem concerning violence against women and domestic violence. The number of declared victims is alarming, considering the fact that a large number of cases do not get reported. The National Agency for Family Protection states that between 2004 and 2008 the reported number of cases with violence in the family was 47,334. Furthermore, these numbers are increasing every year. Over the same period, the number of cases with violence in the family with death as a consequence aggregated to 677 victims.

Lastly, since 2014 entered into force the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, shortly, the Istanbul Convention, first one in Europe to address this human rights violation from a holistic perspective. The existence of Istanbul Convention represents a relevant step forward on woman’s human rights. By ratifying the Istanbul Convention, the states committed to act diligently in their efforts to prevent, protect, investigate and sanction cases of violence against women and domestic violence. Romania signed the Istanbul Convention on July 2014 and currently, the law project of ratifying is waiting for the approval of the Government.

1.2 Aim and Objectives

The aim of this study is firstly an exploratory one. For this purpose, the challenges that Romania must tackle in order to align with the provisions of Istanbul Convention are examined. Thereby, the intention is to point out the most relevant

aspects that must be considered by Romania in order to stand up to the international standards on combating domestic violence. Secondly, the aim is to develop possible solutions aligning with the main findings.

To do so, the objective of this study is, firstly, to track the evolution of the concept violence against women from a legal perspective. Violence against women was not a priority concern for the drafters of the International Convention on the Elimination of all Forms of Discrimination against Women in 1979. Only in 1992, General Recommendation 19 defined gender-based violence, thereby legally connecting to the other provisions of Women's Convention. It took another year for violence against women to be recognized as human rights violation during the World Conference on Human Rights. Recently, the concept of violence against women found its advancement in the Istanbul Convention, the first legally binding instrument that addresses violence against women and domestic violence from a holistic perspective, comprising human right law and criminal law.

Another objective is to grasp an in depth understanding of the women's situation in Romania. To do so, an overview of the Romania's economic and social context is essential, since women's lives are affected by these dynamics, due to the historically disadvantaged position of women in the society and the consequences of (re) production of gender roles. Considering that the Istanbul Convention links legally violence against women and gender inequality, one section will be dedicated on examining Romanian woman's position in comparison with their male peers within the society, and another one will focus on women made victims of domestic violence.

The third and final objective is to conduct a comparative analysis between the Romanian Legislation with the Istanbul Convention and the Spanish legislation. This task is significant, capturing the specificity of the law in each authoritative text. In addition, the comparison allows detecting possible problems of the Romanian legislation, to examine a wide range of provisions, from the legal definition on domestic violence to the preventive and protective measures.

1.3 Methodology

To answer the research question, “What are the challenges that Romania is facing in order to align with the Istanbul Convention standards to end violence against women”, the methodology used for this study is a descriptive one. To do so, quantitative information is gathered, analysed and depicted in order to describe the object of study. The method applied is literature review. The primary sources are the normative documents such as the Women’s Convention, different official documents of the United Nations (CEDAW Concluding Observation on Romania, Vienna Declaration and Programme of Action, United Nations Declaration on the Elimination of Violence against Women, etc.), the Istanbul Convention and the Romanian and Spanish legislation on preventing and fighting against gender based violence. Furthermore, the secondary sources comprise academic literature on each chapter’s object of examination such as the Explanatory Report on the Istanbul Convention, Reports of European Commission on Romania, European Reports on Gender Equality, Shadow Report, and Romanian National Reports and National Strategy on Combating Violence in the Family along with different studies on women’s situation in Romania. The reason for choosing this methodology and methods lies in the fact that the fundamental intention is to analyse legally binding elements, thus Romania is compelled to comply with it.

Additionally, the International Conference on Combating Violence in the Family held in Romania, in which I had the opportunity to participate, provides valuable insight of the way domestic violence is fought in Romania. Due to time limitation, this event could not been used for gathering qualitative data. However, the information on violence against women shared by the professionals participating in this Conference offered a different perspective on my Master’s thesis, which allowed me to see the phenomenon from a more practical and pragmatic angle.

Lastly, due to the fact that the Istanbul Convention is a recent treaty the literature covering it is limited. Therefore, different online recordings of Conferences on the Istanbul Convention are consulted and analysed, which represented a great source of information.

1.4 Limitations of the study

One of the limitations of this study is the narrow training of the researcher regarding legal education. Since my background is in social sciences, writing a thesis from a legal perspective is a challenge in terms of designing the research, identifying the most relevant legal texts and laws or interpreting the legal documents.

Another limitation is the lack of up-to-date data on the magnitude of domestic violence in Romania. The most recent national study on the topic at hand is from 2008, and considering the fact that reform on the law concerning the prevention and fighting violence in the family occurred in 2012, there is a significant need of grasping domestic violence in-depth nowadays. In addition, the Romanian Institutions websites, such as that of the National Institute of Statistics and the National Police Department to name some, are not easy to access. Lastly, Publication State Gazette is not always updating the information, which makes it complicate to detect the new provisions introduced into the laws.

1.5 Outline of the study

The research is structured in six chapters: first, the introduction that explains the essence of the study; the second chapter covers the evolution of the legal concept violence against women at international level and the instruments of soft law; third, examining the Istanbul Convention in depth. Chapter four is focusing on the women's situation in Romania, while the fifth chapter is analysing and comparing Romania's legislation with the Istanbul Convention's provisions and the Spanish legislation. In the last chapter, the main findings will be presented, along with suggestion, which are based on the findings on how the situation in Romania could be improved.

2 VIOLENCE AGAINST WOMEN

2.1 INTRODUCTION

This chapter will address the concept of violence against women from the legal perspective, firstly looking into the authoritative provisions of the International Human Rights Law and secondly, studying documents of soft law tackling this issue at international level. Moreover, will examine the evolution of this concept, moving from being considered a private matter that affects domestic sphere to its recognition as a violation of human rights of women and gender based discrimination.

Violence against women is a widespread and systemic problem that affects women at the international level, regardless class, ethnicity, race and alike, in times of conflict, post conflict or peace. Violence against women constitutes a continuous abuse and violation of their human rights, impeding the enjoyment of their rights, with consequences perceived in the obstacles of women's participation in social, economic, political and cultural life. This structural phenomenon of violence against women has its roots in the multiple and intersecting forms of discrimination.

Throughout the United Nations International Conventions, the right of all human beings to freedom from violence is seen as the core value that cross cuts these legally binding documents. In this regard, this principle is highlighted in the provisions on the inherent dignity and integrity of the person, the right to life, the right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment, the right to liberty and personal security, the right to equal protection under the law, the right to equality in the family and the right to the highest attainable standard of physical and mental health. By ratifying these legal instruments, the states parties are obliged to respect, protect and fulfil the human rights of individuals under their jurisdiction without any distinction of any type.

2.2 VIOLENCE AGAINST WOMEN, FROM UNSPOKEN TO ITS RECOGNITION AS A HUMAN RIGHTS ISSUE

2.2.1 Legal obligation under the Women's Convention

The Convention on the Elimination of all forms of Discrimination was adopted in 1979 by the General Assembly and represents the only international instrument that deals with the rights of women in a broad manner. The Convention does not specify within its provisions women's right to physical integrity nor violence against women (the only reference is stipulated in Article 6 in relation with trafficking and prostitution) but, as the name of the Convention indicates, it deals with anti-discriminatory provisions with the aim of protecting women's rights to equality and eliminating discrimination.²

The articles of the Convention that regard equality are Articles 2 and 5. Article 2 of the Convention stresses the general obligation of the State Parties to condemn discrimination against women and adopt without delay, legislation, policies and other measures to eliminate discrimination in all its forms. This Article has been defined by the Committee as "the very essence of the Convention and crucial for its implementation".³ It underlines the elimination of discrimination whether de jure or de facto by focusing on law, its role and legal institutions to protect women's rights. The Article 2(a) stipulates the obligation of States Parties to introduce the principle of equality between men and women in their national constitutions, or other appropriate legislation, and the practical realization of this principle. Most of the paragraphs of this Article focus on the legal measures that state Party must consider in order to protect women's rights (a, b, c, f, and g), while paragraph d and e refer to the obligation of the public authorities to tackle discriminatory behaviour conducted by any person, organization or enterprise. The Article ends by stating the necessity for cultural and

² BOEREFIJN I. (2005); *Domestic Violence against women in international human rights law*. In *Violence in the Domestic Sphere*, edited by WESTENDORP INGRID; WOLLESWINKEL RIA; p. 43. Intersentia; Antwerp-Oxford; MANJOO R. (2012); *The continuum of Violence against Women and the Challenges of Effective Redress*. *International Human Rights Law Review*, Volume 1, Issue 1, p.2

³ BYRNES A. (2012); *The UN Convention on the Elimination of all forms of Discrimination against Women*. A commentary, Edited by FREEMAN M. ; CHINKIN C.; RUDOLF B.. Oxford

social transformation in order to eliminate customs and practices that discriminate against women.⁴

In Article 5, the Convention calls on States Parties to take all the appropriate measures in order to modify the social and cultural patterns of conduct between women and men, with a view to achieve the elimination of prejudices, customs and practices which are based on the idea of the inferiority/superiority of either of sexes, or on stereotyped roles for men and women (Art.5 (a)), and to address fixed parental gender roles (para. b). The Article does not indicate which “appropriate measures” have to be taken for its implementation, but does imply State’s obligation to introduce educational and awareness campaigns. Over the years, the Committee’s interpretation of the content and scope of the provision highlighted that gender stereotypes and fixed paternal gender roles have a “pronounced impact” on woman’s human rights.⁵ With the inclusion of Article 5 and its wide interpretation, the Convention stresses the systemic and structural inequalities of women along with the gender ideology and urges State Parties to overcome the discrimination resulting from it.⁶ In summary, as Ingrid Westendorp mentioned, “as long as harmful traditions and stereotype gender patterns are not replaced by new customs and traditions that are based on the idea of gender equality, women’s humans rights will remain a dead letter”⁷.

2.2.2 General Recommendation 19

The CEDAW has the power, through Article 21, to interpret and further explain the Articles of the Convention and offer suggestions and recommendations. General Recommendations are elaborated by examining the reports and information received from the States Parties. In this regard, CEDAW has adopted 25 General Recommendations, detailed and comprehensive, on different provisions of the

⁴ OOSTLAND R. (2012); *The principle of Equality*; in The Women’s Convention turned 30, edited by WESTENDORP I.; Intersentia. Maastricht Centre for Human Rights

⁵ CO Korea, CEDAW/C/PRK/CO/1 (2005) para 35

⁶ HOLTMAAT R. (2012) The UN Convention on the Elimination of all forms of Discrimination against Women. A commentary, Edited by FREEMAN M.; CHINKIN C.; RUDOLF B. ; Oxford

⁷ WESTERNNDORP INGRID (2012); *Using culture to achieve equality*; in The Women’s Convention turned 30, edited by WESTENDORP INGRID; Intersentia. Maastricht Centre for Human Rights

Convention, proposing to the States Parties guidance on the application of the Convention.

As it has been mentioned above, the Convention does not address gender-based violence in its Articles but does make an authoritative elaboration on it, taking the step to link the concept of violence against women to the legally binding provisions in the Convention through General Recommendation 19. The Committee requires States Parties to include in their reports the dimension of violence against women.

In General Recommendation 19 (1992), where gender based violence is considered as a form of discrimination that seriously obstructs women's ability to fully enjoy their human rights, violence against women is defined as violence directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

General Recommendation 19 defines the forms of violence, analysing different Articles of the Convention: in Art. 2(f), 5 and 10 (c) violence is understood as family violence, dowry, forced marriage, acid attacks and female genital cutting. Article 6 deals with the trafficking and exploitation of the prostitution of women. In this regard, sexual exploitation is understood in a broad way, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, organized marriages between women from developing countries and foreign nationals. Art.11 indicates sexual harassment including physical contact and advances, sexual remarks, showing pornography and sexual demands as forms of violence against women and Art.12 mention traditional practices including dietary restrictions for pregnant women, preferences for male children and female genital mutilation. Art.16 (and 5) extends the forms of violence against women to compulsory sterilization and abortion, family violence including battering, rape or other forms of sexual assault, as well as mental and other forms of violence.

On the one hand, General Recommendation 19 also calls attention to the high prevalence of different forms of family violence throughout the globe. On the other hand, it indicates the causes of violence embedded in the traditional attitudes that

position women as subordinate to men or in the gender roles that perpetuate practices involving coercion or violence.⁸

2.2.3 Vienna Declaration and Programme of Action

The recognition of women's rights as human rights materialized during the World Conference on Human Rights (1993), as well as the appointment by the Commission of Human Rights of a special rapporteur on violence against women. The Vienna Declaration and Programme of Action specifies that human rights of women and girl-children are an inalienable, integral and indivisible part of the universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measure, through national action, and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.⁹

2.2.4 United Nations Declaration on the Elimination of Violence against Women (The UN Declaration)

In 1993, inspired by the Vienna Convention, the General Assembly adopted the Declaration on the Elimination of Violence against Women, which offers a more comprehensive framework on violence against the women. Art. 1 defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of

⁸ BOEREFIJN I. (2005); *Domestic Violence against women in international human rights law*. In *Violence in the Domestic Sphere*, edited by WESTENDORP I.; WOLLESWINKEL R.; p.44.

⁹ A/CONF.157/23 Vienna Declaration and Programme of Action para.18

such acts, coercion or arbitrary deprivation of liberty. The declaration shaped the scope of private and public dimension on violence against women, to include violence in the family, violence in the community and violence perpetrated by the State, wherever it happens. Article 2 of the UN Declaration mentions that violence against women shall be understood to encompass but not be limited to: physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 4 calls upon States to condemn violence against women and not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue all appropriate means and without delay a policy of eliminating violence against women¹⁰.

2.2.5 Beijing Declaration and Platform for Action

The Fourth Conference on Women, held in Beijing in 1995, generated by the Vienna Declaration, tackled the aspects of discrimination in general and violence against women in particular. The Beijing Declaration and Platform for Action established as goals gender equality, development and peace and constituted an agenda for the empowerment of women. The Governments examined and appraised progress, and identified obstacles and challenges such as the particular vulnerability to violence for women belonging to particular groups: migrant, indigenous, refugee, women in detention, women with disabilities, elderly women, women living in poverty, women in situation of armed conflict and female children. Furthermore, the Beijing Declaration

¹⁰ A/RES/48/104 (1993) United Nations Declaration on the Elimination of Violence against Women, pp.4

and Platform for Action recalls that gender-based violence is a violation of the human rights of women and girls and that the full realization of all human rights and fundamental freedoms of all women and girls is fundamental for their empowerment¹¹.

The Beijing Platform for Action recognizes twelve critical areas of concern for priority action which are: systematic rape, murder, sexual slavery and forced pregnancy, forced sterilization and forced abortion, coercive or forced use of contraceptives, female infanticide and prenatal sex selection, and violence against women and girls in the family and within the home. In addition, the cultural aspects and background should not be used as justification for States not to comply with all human rights. The implementation of the Platform for Action is developed through national laws and the formulation of strategies, policies, programmes and development priorities, in conformity with all human rights and the full respect for religion, ethical values, cultural backgrounds and with the participation of communities for the achievement of equality, development and peace¹².

2.2.6 Further Actions and Initiatives to Implement Beijing Declaration and Platform for Action

On the 23rd Special session of the General Assembly in 2000, the review of the Beijing Declaration and Platform for Action showed the interest of the States Parties to combat violence against the women.¹³ As a result of the session, the document prepared goes further and calls the States Parties to treat all forms of violence against women and girls of all ages as a criminal offence punishable by the law (par. c), including violence based on all forms of discrimination. In this sense the document also makes the following suggestions: (a), Review and revise legislation, where appropriate, with a view to introducing effective legislation, including that on violence against women, and

¹¹ A/CONF/177/20 (1995) Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995,

¹² *Idem* 10

¹³ MANJOO RASHIDA (2012); The continuum of Violence against Women and the Challenges of Effective Redress. *International Human Rights Law Review*, Volume 1, Issue 1, pp. 4; ERTURK YAKIN (2010); 15 Years of United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009)- A critical Review, pp. 5

take other necessary measures to ensure that all women and girls are protected against all forms of physical, psychological and sexual violence, and are provided recourse to justice;(b) Prosecute the perpetrators of all forms of violence against women and girls and sentence them appropriately, and introduce actions aimed at helping and motivating perpetrators to break the cycle of violence and take measures to provide avenues for redress to victims; (d) Establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating to all forms of domestic violence, including marital rape and sexual abuse of women and girls, and ensure that such cases are brought to justice swiftly¹⁴.

2.3 SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN

As already mentioned, during the World Conference on Human Rights, the women's rights found their recognitions as human rights and within the discourse, the need of introducing and mainstreaming the human rights of women in all bodies that comprise the United Nations system was articulated through the treaty monitoring bodies, the effective use of existing measures and through the creation of new procedures to ensure the compliance of women rights. The novelties proposed were the drafting of the Optional Protocol and the nomination of a Special Rapporteur on Violence against Women (thereinafter SRVAW) in 1994.¹⁵

The mandate of the SRVAW covers the improvement of legal doctrine of the different manifestation of violence against the women through research, with a holistic approach, on the causes and consequences of violence against women; the elaboration of recommended keys measures to be adopted according to the empirical findings on the international, regional and national level, cooperation with experts of the Human Rights Council and the Commission on the Status of Women and reporting to the Commission on Human Rights recommended procedures on this topic. The analysis of the violence against women embraces all spheres and life cycle: violence in the family, in the

¹⁴ A/RES/S-23/3, 16 November 2000 Further Actions and initiatives to implement the Beijing Declaration and Platform for Action, para.69

¹⁵ A/CONF.157/23 para. 40

community, violence perpetrated or condoned by the State and more recently, violence in the transnational sphere¹⁶.

Domestic violence and harmful and degrading practices that are violent to and/or subordinate women are the two categories, which address violence in the family. Special Rapporteur Radhika Coomaraswamy indicated the need of conceptualizing violence in the family through the perspective of women's experiences of violence within familiar relationships that establish it as primarily gendered violence perpetrated by men against women.¹⁷ Decades ago, States were offering protection in the cases of domestic violence only to the spouses, due to the lack of better institutional definition on the concept of the family. Nowadays, this concept has expanded and incorporates intimate-partner and interpersonal relationship, regardless sharing or not residence, previous partners and domestic workers. Thus, family can be described as embracing differences and plurality, allowing the inclusion of wife, live-in partners, former wife or partners, girls-friends, female relatives (such as sisters, daughters, mothers) and the female household workers to be beneficiaries of the state protection.¹⁸

For the Special Rapporteur Ertürk, States Parties have the obligation to breakdown the private/public dichotomy looking into the relation between the illegal private behaviour with the public policy. Furthermore, the obligation of State is not only to prosecute the private actors that are violating the human rights of women, but also to protect the survivors of such violence by including provisions of legal and health support, shelters requirements and prevention measures. The Special Rapporteur mentions the external factors can influence the intensifying of domestic violence according to ethnicity, status or context. Moreover, she indicates socio-economic marginalization, occupation, racism; stigma-laden and flawed HIV/AIDS and restrictive migrations policies have

¹⁶ A/HRC/11/6 Promotion and Protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Political economy of women's human rights

¹⁷ E/CN.4/1995/42, Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission. Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45, para 120-122

¹⁸ Idem 12

been held to comprise external components that increase domestic violence. In addition, after analysing the case of the Occupied Palestinian Territories, she point out other elements that are relevant for complying with human rights of women, such as the commitments of states to ensure a secular democratic status, high representation of women in the political realm and legislative measures refraining and condemning discrimination and violence against women. Nevertheless, she stresses the importance of looking into the root causes of violence in the family, among which the (re) production of the gender stereotypes in the media.¹⁹

2.4 DUE DILIGENCE, THE TOOL TO ANALYSE STATES OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

Under international law violence against women is recognized as a form of discrimination against women and a violation of their human rights. In this field of violence against women, States have the obligations to respect, protect, fulfil human rights and therefor they must take measures to prevent, protect, and promote human rights of women. Moreover, they have to investigate and prosecute all forms of violence and to hold offenders accountable.

In 2003, the adoption of the Optional Protocol has expanded the possibility of individual complains (on their behalf or represented by NGO) to be addressed directly to CEDAW when all domestic remedies have been exhausted. This mechanism not only permits the strengthening of woman human rights compliance, but also allows CEDAW to start investigation of systematic abuses denounced.

The CEDAW, articulated in the General Recommendation 19 the standard of due diligence, indicating that “states may also be responsible for private acts if they fail to act with due diligence to prevent violation of rights or to investigate and punish acts of violence, and for providing compensation”. Within the UN Declaration, adopted the following year of General Recommendation 19, the understanding of due diligence have

¹⁹ ERTURK YAKIN (2010); 15 Years of United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009)- A critical Review, pp. 5

enlarged its meaning, stipulating state's obligations to include violence against women by private actors, in the private and public domain, therefor stressing the states duties to prevent, investigate and, in accordance with domestic legislation, punish and deliver compensation for all acts of violence against the women.²⁰

Due diligence is based on the principle of non-discrimination and its application is grounded in good faith. In this regard, States are obliged to apply due diligence standard with the same commitment in all the elements that comprise it (prevention, investigation, punishment and reparation). States must take positive action to effectively prevent any kind of violence against women and hence complying with the human rights standards. To do so, reports on good practices call the attention on the general principle of states obligation to ensure designing and implementation of plans and project based on empirical data, as well as an effective evaluation and monitoring of programs that prevent violence against woman. The ways in which States behave diligent comprise the ratification of the relevant treaties and passing/ reforming specific legislation. The approach on legislation should move beyond punishing the perpetrators to recognizing States positive obligation to design, implement and evaluate policies, programmes, the creation of different bodies that ensure the respect of human rights of women, public education campaigns and conducting research on the women situation²¹.

2.5 CONCLUSIONS

In this chapter we have seen the evolution of the concept of violence against women from a legal perspective, along with the soft law instruments. When the Convention was elaborated in 1979, there was no mention within its provisions on women's right to neither physical integrity nor violence against women. Still, the Convention took a step in 1992 to link the concept of violence against women to the

²⁰ ERTURK Y. (2010); 15 Years of United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009)- A critical Review, pp. 11

²¹ A/61/122/Add.1; Report of the Secretary-General; In-depth study on all forms of violence against women. States responsibility, pp. 73

legally binding provisions through General Recommendation 19. In its provisions violence against women is defined as violence directed against a woman because she is a woman or that affects women disproportionately, obstructing their ability to enjoy fully their rights. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. The recognition of women's rights as human rights materialized in 1993 within the Vienna Declaration and Programme for Action. Moreover, within this event, the Commission of Human Rights appoint a special rapporteur on violence against women. The General Assembly adopted the UN Declaration defining in Article 1 violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty. The Beijing Declaration and Platform for Actions, as well the following documents resulted from the international meeting, established the measures to follow in order to tackle violence against women. In addition, the work of the Special Rapporteur to improve of legal doctrine was found relevant. The Special Rapporteur has the function to scrutinize the different manifestation of violence against the women through research, with a holistic approach, on the causes and consequences of violence against women. Moreover, the tasks extend to the elaboration of recommended keys measures to be adopted according to the empirical findings at all levels.

In the last part of this chapter, a general overview was given to the concept of due diligence, an instruments to measure the compliance of states obligation with International Human Rights Law, and in the case concerned, with the human rights of the women.

3 THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (THE ISTANBUL CONVENTION)

3.1 INTRODUCTION

The aim of this chapter is to present to the reader the Istanbul Convention and the novelties introduced regarding preventing and combating violence against women and domestic violence looking into the Explanatory Report of the Convention. Further, the International Conference on Domestic Violence held in Romania this year and other International Conferences on this topic, provided the author with the opportunity to learn from experts from the Council of Europe and widening the knowledge about the value added of this Convention. Therefore, this chapter will present the Istanbul Convention firstly as a human right treaty, as well as a criminal law treaty and an instrument to promote gender equality.

3.1.1 Background of the Istanbul Convention

As seen in the previous chapter, violence against women finds its recognition as a human rights violation and a form of discrimination against women during the decade of the 1990s. Since then, many actions were addressing violence against women at international and regional level. As a worldwide phenomenon, violence against women was on the agenda of the Council of Europe, representing the 47 Members States that have signed up to the European Convention on Human Rights, concerned with safeguarding and protecting human rights, democracy and rule of law. The concern on women's human rights was translated in different documents and recommendation that Council of Europe produced, such as the *Strategies for the elimination of violence against women in society: the media and other means* (1993); the *Action Plan to Combat Violence against Women* and the follow up in 2002 of the adoption of *Council of Europe Recommendation Rec (2002) 5* of the Committee of Ministers to member

states on the protection of women against violence. The Parliamentary Assembly adopted a number of resolutions and recommendations: Resolution 1247 (2001) on female genital mutilation, Resolution 1582 (2002) on domestic violence, Resolution 1327 (2003) on so called “honour crimes”, Recommendation 1723 (2005) on forced marriage and child marriage, Recommendation 1777 (2007) on sexual assault linked to “date-rape drugs”, and recently, Resolution 1654 (2009) on Femicides and Resolution 1691 (2009) on rape of women, including marital rape. The Parliamentary Assembly called for a legally binding standard on preventing, protecting and prosecuting violence against women, which materialized in the Istanbul Convention, a document that deals with violence against women and domestic violence.

The Istanbul Convention was drafted with the participation of all 47 Member States of the Council of Europe. During this negotiation process, experts from international organizations and NGOs participated and brought their best understanding on women’s issues and gender based violence. The foundation of the negotiation was the progress made at international and European level, such as CEDAW, General Recommendation No 19 on violence against women, UN Declaration against all forms of violence against women (DEVAW) and the case law of the European Court of Human Rights. These documents permitted the elaboration of Istanbul Convention based on human rights principles. Precisely because comprise different domains of the social interaction Istanbul Convention is seen as a human right treaty, as well as a criminal law treaty and an instrument to promote gender equality.

The Istanbul Convention, entered into force in 2014, is the first legally binding document that recognizes the causality and relation between gender inequality and violence against women and provides a normative framework for preventing and combating violence against women and domestic violence. Article 3(a) define violence against women as a violation of human rights and a form of discrimination against women, which means all acts of gender-based violence that results, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 3(b) states domestic violence as all acts of

physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. The novelty introduced by this article in comparison with other documents, is the economic dimension of violence (Art.3 (a)), and in paragraph c, for the first time in an international treaty, gender is defined as the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.

It comprises 81 Articles, 65 of them representing substantive law and the rest establishing the monitoring body. In its Preamble and in Articles 1 and 2 we can find the purpose and scope of the Convention, the creation of a Europe free of violence against women: “the realization of de jure and de facto equality between women and men is a key element in the prevention of violence against women and... that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against women by men and to the prevention of the full advancement of women”.²²

3.2 BRIEF DESCRIPTION OF THE NOVELTIES INTRODUCED BY THE ISTANBUL CONVENTION

The UN Special Rapporteur highlighted that, although there are international instruments such as mentioned in the first chapter (CEDAW General Recommendation No.19, the UN DEVAW, Beijing Declaration and Platform for Action, etc.), these mechanisms are soft law and therefore their effectiveness depends on the political constellation and will. Additionally, the Women’s Convention although a legally binding document, only addresses violence against women in General Recommendation 19²³. This gap of addressing violence against women in a direct manner created

²² Council of Europe Convention on preventing and combating violence against women and domestic violence. Explanatory Report. Para. 25^o

²³ E/CN.4/2006/61 ERTURK Y. Integration of the human rights of women and the gendered perspective: violence against the women. The Due Diligence standard as a tool for the elimination of Violence against the Women. Para.16

ambiguities and permitted states to argue their legal obligations. Moreover, a large number of reservations have been made to the Convention, especially Article 16 regarding women's situation in the family, allowing states to detract from their obligations²⁴.

From this perspective, the Istanbul Convention, as a regional instrument, fills this gap, by setting, in a legally binding manner, the states obligations and the entitlement of women to be free from fear and violence. Under the Istanbul Convention reservations are not allowed, with the exception of the specified provisions stipulated in Article 78. However, even in the eventuality that reservations have been made, they automatically expire after five years. States parties must ask to prolong the reservation and have to submit a report to GREVIO explaining why there is a need for the reservations. In this way, the Istanbul Convention overcomes the differences that might be invoked by cultural differences or contextual specificity.²⁵

3.2.1 The Istanbul Convention, as Human Rights Treaty

The Istanbul Convention is a balanced instrument between the Human Right and Criminal Law Treaty. As is stipulated in Article 2, from the viewpoint of human rights treaty, it is applicable in conflict and non conflict moments, recognizing that during conflict situations, the violence against women might continue to exist not only in the shapes of war crimes or crimes against humanity, but also, for example, as domestic violence. The Istanbul Convention places gender-based violence in the three dimensions: in the family, the community and the State and set out the states obligations to protect women by acting with due diligence in the prevention and prosecution of violence against women. For the first time in an international Treaty, the concept of due diligence is stipulated in a specific article, and in this case in the Article 5. In order to ensure a legal and social framework to prevent violence and to tackle its occurrence, the

²⁴ CHINKIN C. (2013); The Istanbul Convention and its added value on preventing and combating violence against women and domestic violence. Regional Conference on the Istanbul Convention. From Signature to ratification and implementation-Exchange of experience and practices. Helsinki 2013

²⁵ "Reservations referred to in Article 78, para. 2 and 3, shall be valid for a period of five years from the entry into force...however, such reservation may be renewed for periods of the same duration." Article 79 Istanbul Convention

Istanbul Convention specifies the positive actions to be taken by the Member Parties, including when this violence was conducted by non-state actors (by husbands, partners, family members, colleagues, etc.). In this regard, the treaty is victim oriented and the provisions are focused on the victim's safety and rights for compensation and reparations. As well, as a human right framework, establishes the independent monitoring body, namely GREVIO Committee, to supervise the state parties' adherence to their obligations under the Convention, the first one at international level that deals with violence against women and domestic violence²⁶.

3.2.2 The Istanbul Convention, as a Criminal Law Treaty

As a Criminal Law Treaty, the Convention requires incorporation and when necessarily modification of the legislation and procedures regarding the domestic law addressing violence against women. As mentioned previously, the provisions of the Convention were drafted focusing on the experiences and perspective of the survivors of violence against women and domestic violence and not on the perpetrator. This consideration is especially relevant when looking into the understanding and specific acts of violence against women defined and recognized as criminal behaviour. In this regard, the drafters of the Convention bore in mind the variety of interpretations by states regarding the different manifestation of violence against women. For this reason, the Convention provides a list of definitions of the range of relevant crimes.

In Chapter V, the Convention uses a specific, detailed language with respect to substantive criminal law and procedures in order to avoid interpretations of the provisions. The chapter contains a range of preventive, protective and compensatory measures for victims and introduces punitive measures for the perpetrators, with the aim to guide states parties in putting into place effective policies to eliminate violence against women and domestic violence. These criminal acts included in the list are: a) Article 33, psychological violence, with the aim to capture the criminal nature of an abusive behaviour that seriously impairs another person's psychological integrity

²⁶ Idem 23

through coercion or threats occurring over time;²⁷ b) Art. 34, stalking, which is portrayed as the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her/his safety; c) Art. 35, physical violence refers to bodily harm suffered as a result of the application of immediate and unlawful physical force; d) Art. 36, sexual violence including rape seen as all forms of sexual acts which are performed on another person without her or his freely given consent, applicable to all non-consensual sexual acts, irrespectively of the relationship between the perpetrator and the victim or the lack of physical evidence; e) Art. 37, forced marriage, understood as the physical or psychological coercion or luring an adult or a child with the purpose of forcing to enter into marriage; f) Art. 38, female genital mutilation, a provision that breaks with the principle of gender neutrality, criminalize the act of excising, infibulation or performing any other mutilation, including when performed by medical professionals; g) Art.39, forced abortion and forced sterilizations, another provision that breaks with principle of gender neutrality, criminalizes this offence performed on women or girls; h) Art. 40, sexual harassment, seen as verbal, non-verbal or physical conduct of a sexual nature unwanted by the victim, and although this article is not limited to the field of employment, the requirements for liability can differ depending on the specific situation in which the conduct takes place.

Under the criminal law perspective, another relevant element is the inclusion of aiding or abetting and attempt of the offences defined in the convention. In addition, requires states parties to establish as an offence to commit the in following situations: extreme cases of physical violence, sexual violence including rape, forced marriage, female genital mutilation and forced abortions and forced sterilization. Under Article 42 of the Convention, no defence is allowed for gender-based violence justified by cultures, religion, customs or traditions, and to illustrate that, defending an honour crime in the name of culture or religious is prohibited under this provision. This covers claims that victims have transgressed the cultural, social, religious norms of conduct, for example

²⁷ For this provision, any state may declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanction

gender construction of a desired comportment, dress codes, autonomy in relationship, accessing public spaces, etc.²⁸ Article 46 urges states to take into consideration aggravating circumstances in the determination of the punishment of the perpetrators, in situations such as offences conducted by family members, that are occurring repeatedly, committed against a person made vulnerable by a particular circumstance, offences committed to a child or in the presence of a child, offences committed by two people or more people together, using a weapon or offences accompanied by an extreme level of physical violence. Among other innovative provisions is the Article 48 that prohibits mandatory alternatives disputes resolution process or sentences, bearing in mind the disadvantaged position of women in an unequal power relation. Article 51 requires states to evaluate and manage the risk of extreme violence resulting in death, in order to avoid situations as presented in the case law *Opuz against Turkey*. The obligations fall on the law enforcement bodies and the social agencies to evaluate the gravity of the situations, the vulnerability of re-victimization and take measures to handle this risk.

3.2.3 Holistic approach

Beside the fact that Istanbul Convention is a Human Rights and Criminal Law Treaty, detailed in its provisions, the third added value is the holistic approach, looking into the violence against women and domestic violence as a structural problem rooted in gender inequality. The Convention is based on the most progressive interpretation of international and regional human rights law and case law, and, as a part of the system internally consistent and comprehensive, offers states a coherent and practical measures to tackle violence against women and domestic violence at a domestic level.²⁹

As stated in the introduction, the Istanbul Convention incorporates the four principles of the Council of Europe, namely Prevention, Protection of the victims, Provisions of services and Participation of women as a mean of seeking women's empowerment. These principles permit the materialization of the holistic approach by mixing exhaustive legal and practical measures; including the commitment to elaborate policies that are gender sensitive (Art.6) and to appropriate allocate economic and financial

²⁸ Idem 23

²⁹ Idem 23

resources (Art.8). In order to achieve the scope and the purpose of the Convention, the provision in Article 7 recognize the need of multi actors cooperation, such as government agencies, parliaments, national human rights institutions, civil society, media, religious bodies, youth groups, men and boys. This multi agency cooperation enhance the effectiveness of implementing the Istanbul convention examining or elaborating risk assessment reports, Safety Plans, Guidelines and Protocols for Agencies to follow and the training of the professionals on their use and benefits. Moreover, stipulates the need for governmental policies to be subjected not only to the GREVIO's work, but also, at domestic level, by a body entitled with the task of co-ordinating, implementing, monitoring and evaluating the polices and measures of the present concern by the means of scientific evaluation, research in administrative and population-based data, collection of data, analysis and dissemination of the results to the public. Article 11 highlights the need of data collection and research as a measure for the improvement of the effectiveness of the policies, through population-based survey, statistical administrative or judicial data. The provision on the prevention policies are presented in the Convention's commitment to achieve transformative equality, the obligation of states to take preventives actions (as described in chapter III-Prevention of the Convention) to renovate gender relations and to promote changes in the social and cultural pattern of behaviour of women and men with the view to eradicate prejudices, custom, religious traditional practices which are based on the idea of the inferiority of the women/superiority of men or the stereotyped roles for women and men.

In terms of protection and support, the Istanbul Convention requires states parties to take the necessary legislative or other measures and mechanisms to protect and support all victims of violence against women and domestic violence. Under Article 20, states parties are obliged on one hand, to provide with general support-social, health and employment services with a view on long term support; on the other hand, they must ensure immediate specialist support services, such as housing services, public psychological and legal counselling services. In addition, Article 22 mentions other specialised services like immediate medical support, collection of forensic medical evidence in case of rape/ sexual assault, trauma care, etc. In article 23, states are

required to set-up shelters in sufficient numbers and in a wide geographic distribution in order to fulfil the obligation to provide victims with protection and support. In this regard, the drafters of the convention stress the need of specialized women's shelters that comply with minimum standards like an individual security plan, technical security for the building, effective co-operation with the police department, training of the professionals on different manifestation of violence against the women and domestic violence and generally, recommends one family place per 10.000 head of population, although the decision should be made according to the specific need. Article 24 introduce free of charge 24/7 telephone helplines covering all forms of violence against women and domestic violence, that ensure support in crisis situation as well as confidentiality. States are obliged, under the article 25, to set-up rape crisis centres or sexual assault centres. The minimum standards established are, in the case of sexual violence victims, immediate medical care, high quality forensic practice and crisis intervention, and for the rape victims, states are expected to ensure a long term support, as well as one accessible centre for 200.000 inhabitants. Among other protective measures, under the article 26 states are obliged to provide psychological and social support for child witnesses, defined as children who are present during the violence and actively witnesses screams or other sources of violence.

After presenting the novelties and the specific measures to be taken, it is easy to value that the Istanbul Convention represent an instrument that, grounded on the sociological understanding of the causes, consequences and the prevalence of violence against the women, applies a holistic perspective in its provisions, since it combines the social, educational and awareness campaigns measures, protective and supporting measures, with legal process as in civil and criminal law.

In its recommendation to states, the Istanbul Convention ensures that violence against women is recognize for what is: *a serious crime of public concern, it places that crime within a social context, as constructed by gender hierarches, and takes a practical and pragmatically approach to achieve a reality where women are free from violence and*

*fear*³⁰.

3.3 CONCLUSIONS

The Istanbul Convention combines criminal with human rights law in a unique instrument. It is grounded in non-discrimination and gender equality and it is a comprehensive, holistic and practical instrument of protecting women human rights built on the principles of Prevention, Protection, Prosecution and Integrated Policies. The Istanbul Convention tackles violence against women from all angles, social, economic, political and legal. Thus acknowledge the fact that violence against women is mainly affecting women and girls, still invites states to apply the provisions to other victims of domestic violence, such as children, elderly, etc. It is women specific in some of its articles, such as Article 38 regarding Female Genital Mutilation or Article 39, which deals with Forced abortions and forced sterilization Generally, it encompasses specific provisions about laws, policies, measures, and services to be implemented and urges States to effectively coordinate actions of the judiciary, the police, and social institutions in addition to the support of policy makers, the civil society and the media. As a regional instrument, it is open for signature and ratification for the Member States of Council of Europe and for non-members states. By ratifying, states subscribe to act diligently in their efforts to prevent, protect, investigate and sanction cases of violence against the women

³⁰ CHINKIN C. (2013). The Istanbul Convention and its added value on preventing and combating violence against women and domestic violence. Regional Conference on the Istanbul Convention. From Signature to ratification and implementation-Exchange of experience and practices. Helsinki 2013

4 WOMEN'S SITUATION IN ROMANIA

4.1 INTRODUCTION

In order to better understand the aspects implicated in preventing and combating violence against women in Romania, there is a need of analysing the status quo of the Romanian women. In the first part of this chapter the general situation in Romania will be tackled by looking into documents such as Transformation Index Report, the United Nation Development Program (hereinafter UNDP) Human Development Report and the European Commission Report on Romania. This part is relevant because the situation of women is inscribed in a dynamic system of economic and political forces that determine their well-being. After briefly introducing the Romanian landscape, an overview will be presented on gender inequality in Romania in order to progressively approach and narrow down women's situation as survivors of domestic violence using sources like the Gender Equality Index, Concluding Observation of CEDAW on Romania, the Shadow's Report, Romanian literature review, etc. The reasoning of following this structure is due to the fact that the Istanbul Convention establishes the interconnection between violence and gender inequalities, as causes and consequences of violence against women and domestic violence. Hence, understanding gender inequality in this context is part of the process of discovering what might be the challenges for Romania to align with the standards stipulated in this Human Rights Treaty.

4.2 SOME BRUSHSTROKES ON ROMANIA

The Romania's situation is analysed by looking in some particular variables. The following variables are mainly examined considering the fact that may affect women disproportionately due to their historically disadvantaged position and the reproduction of gender roles.

According to the 2013 UNDP Report on Human Development, Romania was holding the 54th position among 187 countries in terms of long and healthy life, access to knowledge and decent standard of living. Romania scored numbers above the average for countries belonging to high human development group (0,78 against the average 0,73) but is positioned low in comparison with the average country of the European Union, which is 0,87. Although Romania had a relatively good ranking, when looking into the distribution of human development among the population, Romania falls to 0,70 due to inequality in distribution. According to Romanian Growing Inequalities Impact Report, in 2010 inequalities are affecting people depending whether they live in the rural or urban area in a specific region of Romania. The household's characteristics and the individual specificity are the two other factors that influence the inequalities in Romania. Moreover, another Report of UNDP indicates that though poverty is not extreme, it still represent a challenge³¹. The disparities between the urban-rural area, social exclusion and the situation of Roma people are among the problems that Government has to tackle³².

At the beginning of year 2014, Romania had a total population of roughly 20 millions inhabitants, from which 48,8% were men and 51,2% women. In the last years it has scored negative numbers in terms of demographics, around 7,2% less between 2002-2013, due to the negative values in birth rate and migration. According to the National Institute of Statistics, from the total population, 2.3 millions Romanians were living abroad in 2013 (12% of total). The structure of the population points out ethnical diversity represented by 88,9% Romanians, 6,5% Hungarians, 3,1 % Roma people and small percentages of Ukrainians and Turkish population.³³

³¹ <http://hdr.undp.org/es/content/human-development-index-hdi-table> in June 2015.

The Human Development Index measures the variables according: the life expectancy; the means years of education among the adult population; expected years of schooling for children of school-entry age. Standard of living is analysed by the Gross National Income per capita.

³² ROMANIA COUNTRY REPORT (2014); Bertelsmann Stiftung's Transformation Index (BTI). This Report evaluates the transformation toward democracy, the market economy and the political management around 129 different countries, including Romania; SWD (2015) 42 final; Commission Staff Working Document. Country Report Romania 2015, including an In Depth Review on the prevention and correction of macroeconomic imbalances, p.2; PRECUPETU I.; PRECUPETU M. (2011); GINI Growing Inequalities' Impact. Growing Inequalities and their impact in Romania. Country Report for Romania

³³ National Survey Romania 2011; <http://www.edrc.ro/recensamant.jsp?language=0> June 2015

The main demographic characteristics are the fact that the young group comprising 0-14 years has decreased over the years (representing 16,4% from total), as well as the group covering ages 15-64 years (68% from total). While these units were reducing progressively, the population above 65 has rising, becoming 15,6% of the total population in 2014 (a phenomenon perceived mostly with women living in rural area). In general, these demographic dynamics are considered to be the consequences of an unfavourable economic and social country situation³⁴.

4.2.1 Economic Growth, Labour Market and Social Issues

Before 2007, Romania was having a progressive economic development measured in terms of GDP. However, after the global economical and financial crisis, the results pointed out the fragility and weaknesses of the economic system. The GDP shrank by 6,6% in 2009 and further 1,6% in 2010. Since 2011, the Romanian's economy was growing again, with an estimate of approximately 3% in 2014. According to the European Commission Country Report, the forecast for the next years is to remain robust over 2015-2016 due to the domestic demands and a stable labour market.³⁵

According to the National Agency for Employment, in April 2015, the Romanians in unemployed situations were 463.247; of which males represented a total of 269.471, and women 193.776. From the total of the unemployed population, only 97.392 were receiving unemployment benefits. The distribution of unemployed population was mostly located in the rural areas; the scores indicated that 51,69% of the unemployed were aged between 30-49, and 80,43% of the total number, had primary, secondary and professional training education.³⁶ The conditions on the labour market remained modest although there was a shy economic recovery. Generally, the labour market was

³⁴ PRECUPETU I; PRECUPETU M. (2011); GINI Growing Inequalities' Impact. Growing Inequalities and their impact in Romania. Country Report for Romania, p. 8

³⁵ SWD (2015) 42 final; Commission Staff Working Document. Country Report Romania 2015, including an In Depth Review on the prevention and correction of macroeconomic imbalances, p.3; ZAMAN G.; GEORGESCU G. (2009); The impact of global crisis on Romanian's economic development. *Annuales Universitatis Apulensis Seri Oeconomica*, 11(2). Pag.617

³⁶ <http://www.anofm.ro/files/OPERATIVA%20APRILIE%202015%20.pdf> June 2015

characterized by low employment, high inactivity rates and shrinking working age population. The migration of qualified and unqualified labour was found to be provoked by the lack of job opportunities, Romania scoring a very low average of job vacancies in comparison with the EU level.

Despite the fact that Romania has showed some improvements during 2014, the groups that were most affected by the low employment and activity rate were women, youth, the elderly and Roma people. According to the European Commission Report, the decrease in women participation in the labour market was linked to the need of women to provide care for children and dependent relatives.³⁷

Looking into the social protection, as stated before, the major challenges of Romania were represented by poverty and social exclusion. Despite the gradually decreasing numbers, the proportion of people in risk of social exclusion was tripling the average of EU-countries (40%). In 2010, the absolute numbers for people affected by poverty was 1.110.000. Among the most affected were families with numerous children, single parents, youth and Roma people. Furthermore, the fact that Romanians were participating in the labour market was not a guarantee of avoiding poverty. According to the data presented in the Romanian National Strategic Plan for Social Inclusion and Combating Poverty, 92% of the people working and living in poverty were concentrated in rural areas, in isolated regions, with an average level of education of 8 classes. The majority of this group combined the salaries with the social benefits, mostly the child allowance, in order to survive poverty.³⁸

The minimum wage in the beginning of 2015 was approximately 217 euros and in relative's terms, the wage was low, representing 36,3% of average gross earnings in 2013. In addition to the low wages, significant discrepancies existed according to gender and sector. According to the GINI Report, the wage gap between women and men was caused by the participation of women in economic activities with lower value added (in 2010, the average new wage for women was 1308 RON, approximate 291 euros; while for men it was 1466 RON, approx. 326 euros). Furthermore, in 2010, some sectors of the economy (financial intermediation, the energy, the mining, etc.) had

³⁷Idem 32, p.57

³⁸ Strategia Nationala privind Includiunea Sociala si Reducerea Saraciei 2015-2020. Ministerul Muncii, familiei, Protectiei Sociale si Persoanelor Varstnice. Pag.20

double wages in comparison with the national average. The hotels and the restaurants sector had wages half then the national average, while education and health sector were the most in line with the national standards³⁹.

In addition, the social protection system was lacking mechanisms to address this situation. The soft impact of social transfer, the reduction of heating and unemployment benefits, child allowances and the elevated level of in-work poverty influenced the overall standard of living of the Romanian population, increasing significantly the severe material deprivation especially among the people in the rural areas, with low level of education, children and the unemployed.⁴⁰

In 2012, Romania had the third lowest expenditure in the EU of their GDP for healthcare, a domain facing many problems: poor health outcomes, problems with accessibility for all the citizens especially the ones in the rural areas, insufficient use of resources and informal payments, such as little gifts. The lack of an integrated long-term care, residential and home care was another aspect that needed to be addressed. The founding for the long-term care represented in 2012 only 0,7% of GDP, and mostly were supported by external factors, such as the EU funds and European Social Fund.⁴¹

When looking into the education sphere, the European Commission Report indicated the general need for improvement, ensuring adequate resources (the expenditure in 2012 was around 3% of GDP, the lowest at the EU level), especially for research and kindergartens. The most affected by this situation are children living in rural area, the Roma children and the rest of the population generally. In addition, the projects addressing children with functional diversity were randomly developed and are depended on non-governmental organizations and EU funding.⁴²

The judicial system underwent transformations in the last years. The progressive implementations in 2014 of the reforms of the Codes (Civil, Criminal and Procedural Codes) are indicating a good adjustment, albeit there are issues to be tackled. Among this challenges, the European Commission mention the workload of the judiciary,

³⁹ Idem 32, p.21

⁴⁰ Idem 32 p.19

⁴¹ SWD (2015) 42 final; Commission Staff Working Document. Country Report Romania 2015, including an In Depth Review on the prevention and correction of macroeconomic imbalances, pag.61; ROMANIA COUNTRY REPORT (2014); Bertelsmann Stiftung's Transformation Index (BTI), p. 16

⁴² Idem 34

mostly civil and commercial cases, as a recurrent problem that influence the quality of the judicial processes and decisions. Problems have arisen also due to the fact that the Government Emergency Ordinances are part of the legislative system. On one hand, the incoherence and lack of clarity of the legislation, caused by limiting the possibility of the consultancy with different stakeholders; and on the other, the impossibility to challenge the content of the Emergency Ordinance by the Ombudsperson. In addition, the Report points out the difficulties in enforcing civil and administrative courts decisions.⁴³

A last remark on the Romania context indicated by the European Commission report is the fact that the country, despite the progressive improvement, does not have yet a high rate of structural funds EU absorptions. However, the absorption rate is higher for the Operation Programme for Administrative capacity development, scoring 72%, from which Human Resources Development engrossed 47% by the end of 2014⁴⁴.

4.3 WOMEN AND GENDER (IN) EQUALITY IN ROMANIA

According to the last CEDAW Concluding Observation from 2006⁴⁵, the Committee recognize that although Romania has improved in many areas, such as the adoption of different laws on preventing and combating domestic violence or the trafficking in person to give some examples, there are still issues left to be addressed, which will be presented next. In a list that comprises the principal areas of concern, the Committee highlighted the limited available statistic data disaggregated by sex, ethnicity, age, and urban/rural areas, which makes the evaluation of the progressive implementation of the Convention very difficult to monitor. A second concern of the Committee was the lack of knowledge of women's rights, in particular by the female population, and in general

⁴³ COM (2015) 35 Final. Report from the Commission to the European Parliament and the Council. On Progress in Romania under the Co-operation and Verification Mechanism. p. 5; SWD (2015) 42 final; Commission Staff Working Document. Country Report Romania 2015, including an In Depth Review on the prevention and correction of macroeconomic imbalances; p. 68

⁴⁴ Idem 41.p. 29; The Romanian Project Start-A quality life in safety, among which the International Conference was part of this Project, was financed by the Operational Programme

⁴⁵ CEDAW/C/ROM/CO/6 Concluding comments of the Committee on the Elimination of Discrimination against women, 15 May-2 June 2006

of the whole population, as well as the insufficient awareness about the Convention and the Optional Protocol among the legal and the judiciary professionals. The insufficient visibility, decision-making power or the limited economic and human resources of the national authority in charge with the promotion and the advancement of women and gender equality were found to be a challenge to be overcome⁴⁶. Furthermore, the Committee was concerned with the low representation of women in the elected bodies, especially in the decision-making levels, including the Parliament, executive's bodies of the government or local government in addition to the lack of mechanism to redress this situation.

In relation with violence against women, the Committee urged Romania to take measures in order to protect victims of such violence by implementing the protection orders, access to safe shelters, distributed on a wide geographical area that can cover the need of women from the rural area, legal aid, free hotline operating 24/7. In addition, the Committee call attention to the Law 217/2003 and the lack of addressing violence against the women in all its forms, according to General Recommendation n°19.

Furthermore, the Committee emphasized the need to address women's issues in different situations (e.g. victims of trafficking, women in rural areas or women belonging to minority groups). The Committee stressed the importance of addressing access to education and health for the collective of women that are facing economic insecurities and poverty. Regarding women on the labour market, the Committee called attention to the wage gap between women and men, in both public and private sector and the concentration of women in health and education, areas which are less economically valued.

Although the Concluding Observation of CEDAW addressed the problems of Romanian women in 2006, the information is still relevant as regards the most relevant aspects to be considered in order to understand Romania's progress in women's human rights.

⁴⁶ In 2006, the body in charge of women's issues was the National Agency for Equal Opportunities between women and men, under the Ministry of Labour, Social Solidarity and Family, created in 2005 and dissolved in 2009 by the government decision No. 1381/2009

More recent data on women's situation at the European level, including Romania, is presented in the Gender Equality Index Reports⁴⁷, studies that scrutinize different dimensions of human life by looking into the differences between men and women in the member states comprising the EU. In the last Report measuring gender gaps adjusted for levels of attainment between 2005-2012, Romania was found to be at the bottom of the list among the countries. With 100 points representing an equal gender society, Romania had marked in 2005 around 36 points, followed by 35 points in 2010 and finally 33,7 in 2012, progressively declining in terms of levels of achievements for a period of 7 years. For a better view of this situation, the Gender Equality Index with data from 2010 offers more comprehensive information, presented next, in addition to Romanian literature review on the topic.

In the Index, the domain work comprises paid work and is subdivided in: a) participation of women on the labour market, b) the gender segregation as concentration of women and men in different sectors and levels of economic activity and employment and c), quality of work that looks both to the work participation and the characteristics of employment. In the case of Romania, looking into the full-time equivalent participation, the gender gap between men and women is approximately 14% with men being more engaged in full-time jobs. With regard to duration of working life, Romanian men worked as much as an addition of approx. 5 years in comparison to women. Regarding segregation, the study looked into the over-representation in economic field of work traditionally attributed to women, namely jobs in education, human health and social work activities. The Romanian men had a low participation in these sectors of the economy, around 4%. However, in comparison with female participation, the gender gap was one of the narrowest at the EU level.

A Romanian study from 2011 on gender inequality regarding work and wage found that over 40% of Romanian women worked in healthcare, education and public administration sectors, representing twice the proportion in comparison with men. In the health and social sectors the proportion of women was 80%. Moreover, according to

⁴⁷ Gender Equality Index (2013) and Gender Equality Index 2015. Measuring gender equality in the European Union 2005-2012

this study, women were concentrated in sectors that were economically less valued⁴⁸. Regarding activity rate, Romanian Institute of Statistics showed that in the last semester of 2014, the proportion of active population in total was 60,8%, of which 68,8% were men and 52,7% were women, with similar proportion distributed in the urban/rural area (60,9% against 60,8%). Disaggregated by age and sex, the activity rate was higher for men aged between 25-54 (90% while women of this age were 72%), followed by the group 55-64 years in proportion of 56% (women 34%) and youth, between 15-24 years scoring 34% for men and 24% for women⁴⁹.

The following domain examined is money, comprising the financial recourses and the economic situation. The mean monthly earnings in Romania in 2010 was the second lowest after Bulgaria, similar values being marked in 2012⁵⁰. The gender gap between men and women represented approximately 10%, one of the smallest among the EU states. The mean equalised income is calculated by dividing the total income of a household among its members⁵¹. Romania was the country with the lowest income, one seventh of Luxembourg, the country with the highest score in this variable. The income gap between women and men in Romania was roughly 2%. One study conducted in 2011 in Romania, using a sample of 3200 respondents aged between 15-64 years, found that, in terms of wage gap, “ equal pay for equal work is not yet implemented in Romania. The causes reflect not only gender discrimination, but also inequalities regarding education, horizontal and vertical segregation on the labour market; the difficulty in combining work life this family and private life; the unequal distribution of the domestic tasks; the lack of transparency of paying and the impact of gender roles when choosing the education and profession career”⁵².

Knowledge is the domain that analyses the differences between men and women in education and training, comprising the equal access and attainment, eliminate gender

⁴⁸ ZAMAN G.; POPA E.; BONDREA.A; PASNICU D.; MLADEN L.; COCOSATU M.; BARBALATA S.; ANDRONIE I. (2011); Diferentele bazate pe Gen in ceea ce priveste Profesiile, Cariera si Veniturile. Editura Fundatiei Romania de Maine. Universitatea Spiru Haret, pag. 116

⁴⁹ Institutul National de Statistica. Comunicat de Presa N. 70 din 24.03.2014

⁵⁰ HUMBERT A; TAMOSIUNE V.; OETKE N.; PAATS M.; (2015); Gender Equality Index 2015. Measuring gender equality in the European Union 2005-2012; EIGE

⁵¹ The authors' acknowledge the fact that this indicator is imperfect since ignore the gender norms and power relations that may lead to unequal distribution within the household. It is used in order to approximate the gender gap in income.

⁵² Idem 42; p.169

division of the educational arenas and endorsing lifelong learning. Compared to the member states of the EU, in 2010 Romania ranked within the lowest percentage of students attaining the first and second tertiary education, values that continued decreasing in 2012⁵³. Only 11% of Romanian female students attended tertiary education. In relation to the segregation in educational fields, according to the report, there is gender balanced in the field of science, mathematics and computing (53%). The gender gap was 9% for the field of teacher training and educational science, health and welfare, humanities and arts; female students represented a proportion of 20%. Participation in the lifelong learning in Romania was below 15% for men and women, the second bottommost position after Bulgaria.

The variable time is looking into the time allocated for different activities of life such as economic and social activities and care giving. The data presented in the Index showed that Romanian women were dedicating more time for education and care of children and grandchildren. Among the EU countries, Romania has the second highest gap around 30%. A study conducted in 2011 in Romania showed that when asked about who should provide the care for dependent children when both parents are working, 51% of the respondents considered that the mother should be the one in charge; 16% answered that it does not matter which parent give, 14% considered that grandparents or relatives should take care, 14% attributed this task to the public authorities care and in small percentages, hiring a babysitter or the father were given as an option⁵⁴. Furthermore, one study on gender inequalities in Romania regarding work and wages pointed out that woman decide more frequently to be in a mono-parental family, which, in addition to the lack of facilities to combine work with care giving, force women to exit the labour market. In 2011, the rate of occupation of women with one dependent child was only 65,6% compared with the proportion of men in the same situation, scoring 90,3%⁵⁵. For the variable cooking and housework, Romania is part of the group of countries where women spend more then two hours on cooking and housework while men only spend half an hour on average.

⁵³ Idem 44;p. 43

⁵⁴ Cercetare Nationala privind egalitatea de sanse si gen: p.20

⁵⁵Idem. 48p. 117

The area of power is analysing the representation of women and men in decision-making positions, both in the sub-domains of economic and political representation. In 2010, the percentage of Romanian women Ministers, Parliament and Regional Assemblies, was not above 15%. Regarding this variable, Romania was at the bottom list among the member states of EU (in 2012, men were holding 94% of the ministerial places)⁵⁶. However, when looking into the representation of women members of the boards of the largest companies, Romania was among the first five countries that had more than 20% women in decision-making bodies. According to a study on the impact of descriptive representation on substantive representation of women in Romania, in the current legislature that was initiated in 2012, the number of women members of the National Parliament was 67 out of a total 572, corresponding to 11,71% of the total. Nevertheless, the number of Romanian female members of European Parliament between 2009-2014 was 36% from the total of the delegation members. When looking to the division by chambers, 13,71% of women were in the Chambers of Deputies and 7% in the Senate.⁵⁷

4.3.1 Women as survivors of domestic violence

In 2013, violence against women including interpersonal violence in Romania represented a serious problem that according to the Country Report on Human Rights Practices needs to be tackled. The report indicated that although the law prohibits domestic violence and allows police intervention for these cases, the Government did not effectively address this problem. In general, just a few cases are presented in front of the court, with many cases being resolved before or during the trial due to the withdrawal of the charges by the victims or reconciliation with the alleged abuser.

⁵⁶ Idem 44.p.54

⁵⁷ GARBONI S. (2015); The impact of descriptive representation on substantive representation of women at European and national parliamentary levels. Case study: Romania. International Workshop on Ideologies, Values and Political Behaviours in Central and Eastern Europe. Procedia, Social and Behaviour Sciences, pag.86

According to this Report the numbers of persons that filled a suit concerning domestic violence in 2012 was 1,857 and 440 person were prosecuted for domestic violence⁵⁸.

The National Agency for Family Protection stated that between 2004-2008 the reported number of cases with violence in the family at the national level was 47,334⁵⁹. For the same period of time, the number of cases with violence in the family with death as a consequence aggregated to 677 victims. In 2008 there were 11,534 cases of violence in the family reported. Compared to 2007, this represents an increase of 31% (2747 cases)⁶⁰.

According to the pilot project conducted by the Police Department on domestic violence in the Capital City Bucharest, after fill-in 1700 reports between 2011-2015, the results indicate that 40% of the cases of domestic violence are conducted by the same perpetrator; 83% happened in the family residence; 24,9% of the victims had one or more certificate forensic evidence of the violence; 18,2% of the domestic violence was between the former partners; 54% of victims had at least a high school diploma. In 68,4% of the cases alcohol has been reported to facilitate violence and 47% of victim withdrew the official complain. The same study discovered that 77% of the domestic violence cases were present in families with children, of which on average 6% were direct victims of domestic violence. Moreover, elderly were in a proportion of 13,6%, victims of their children. Furthermore, the results indicated that the lack of work was facilitating men aged between 30-36 years to become perpetrators⁶¹.

The National Survey conducted in 2009 with the aim to determine the dimension and the gravity, as well as typology and the characteristics of the domestic violence phenomenon in Romania, is the most recent and comprehensive national study on this subject⁶². In 2009, the results showed that 18,4% of the adult population, men and women, had been victim of one or more forms of violence in the family during their

⁵⁸ United States Department of State (2013); Country Reports on Human Rights Practices for 2013. Case study: Romania

⁵⁹ In Romania, the law refers to interpersonal violence as Violence in the Family, therefore the official reports uses this terminology.

⁶⁰ Evolutia fenomenului de violenta in familie. V Protectia Familiei (2009) Ministerul Muncii, Familiei si Protectiei Sociale;

⁶¹ The data is unpublished, being presented during the International Conference on Violence in the Family, Romania, May 2015; Start-O viata de calitate

⁶² http://cercetareromania.ro/download/rezultate_cercetare_viodom.pdf

life, and 9,6% in the last 12 months. Following, for the purpose of this chapter, the data presented will focus only on women, although the study examined and presented the results regarding variable men/women. In the present study, as well as in other research, the findings revealed that violence in the family in Romania, as well as in other countries, is violence conducted mostly against women (albeit male are also victims as such violence). The study states that two-thirds of the victims, who claimed physical, psychological and sexual violence, were women. One third of the victims were men, claiming mainly social and economic violence.

When disaggregating the forms of violence in the family during their lifetime 21,5% of women suffered from violence, of which physical violence accounts for 13,5%; psychological violence 18,5% (verbal violence 16,4%; humiliation and degrading treatment 13,3%; threatening, intimidation 15,3%); social violence 9,8%; economic violence 5,3% and sexual violence 2,5%. 11,1% of the women questioned in the survey stated that they suffered from violence within the last 12 months; of which physical accounted for percentage of 4,7%; psychological violence for 10,4% (verbal violence 85%; humiliation and degrading treatment 6,7%; threatening and intimidation 7,8%); social violence for 5,1%; economic violence for 2,7% and sexual violence for 0,5%⁶³.

The incidence of violence in the family was calculated comparing the data from the National Study on Domestic Violence and Violence in the Working place (2003) with the data from 2008. The results indicate that the total rate of violence had increased for the both variables examined (violence suffered within the last 12 months or lifetime). The number of incidence of violence grew by 4,1% for violence during the lifetime, and 1,6% for the variable violence within the last 12 months, in comparison with 2003, for both rural and urban area. Compared to 2003, in particular the number of physical and psychological violence was higher in 2008. According to the official report of the Minister of Work, Family and Social Protection, the rise in the number of reported cases was due to the fact that public institutions were more aware of the seriousness of violence in the family and also due to the new provisions in the Legislation of preventing and fighting against violence in the family, and consequently, the

⁶³ Idem 54, p. 21

dissemination to the general public via awareness raising campaigns and other activities⁶⁴.

Regarding age, the variable violence suffered in the last 12 months, was the highest for young people, men and women, between 18-30 years (15%); 10% for the group aged between 31-65 while the people above 66 accounted for only 2%. The rate of violence in the family varies according to the marital status of the person interviewed and the composition of the family; cohabiting, roughly 24%, constitute the highest percentage followed by singles, 10,9% and married couples 9,3%. The rate of violence was approximately 22,5% for the families that had at least one dependent child in comparison with 16,2% for families with no dependent child. For variables level of education, religion, ethnicity and socio-occupational status, the study did not find any correlation with the occurrence of violence in the family⁶⁵.

81% of the victims of violence in the family, particularly women, stated that they suffered from more than one form of violence. When asked about their assessment on the severest form of violence, more than half considered that psychological violence is the most harmful⁶⁶.

The respondents stated that they have suffered more than once violence in the family (63%); this violence occurred during and/or after five years of being married, approximately 80%, while violence in childhood happened in 23,4% of the reported cases and before marriage in 16,8%. In 46% and 21% of the reported cases, the perpetrator was husband and the ex-husbands respectively. The violence perpetrated by parents was mentioned in 32% (19% by the fathers and 13% by the mother); 6% of the victims confirmed being abused by brothers and sisters while 3% by their children. In 60% of the cases, the abuse occurred in the presence of relatives or friends, and in one case of four, in the presence of dependent children.

In 2008, 55% of the victims were living with the perpetrator; of which 57% of the victims either stayed because they hoped that the partner is going to change or due to strong emotional feelings towards the abuser or just because the victims thought that every family has problems; 23% stayed because they did not have any other option no

⁶⁴ Idem 54

⁶⁵ Idem 54.p. 26

⁶⁶ Idem 54.p. 30

other place to live, insufficient money or because of the fear of making the children suffer) and 20% could not specify the reason why they did not leave⁶⁷.

In summary, the socio-demographic profile of victims and aggressors from this study revealed that violence in the family affects mostly women, generally middle aged, with a medium or low educational level, working outside of the house. They are usually married women, especially from an early age, belonging to large families and having dependent children under their care. In most cases they are part of poorer families with low incomes. Compared with non-victims, the proportion of chronic deceases is higher for victims of violence on the family. Regarding the profile of the perpetrators, they are usually men; aged between 30-40 years, generally with low educational level although one third of them have at least high school or higher education (13%) and they are participating in the labour market. There is a tendency of being convicted of other types of criminal offences among perpetrators. One third of the perpetrators were under the influence of alcohol when committing violence against women⁶⁸.

4.4 CONCLUSION

In this chapter we have seen that Romanian women face multiple challenges. Firstly, they are inserted in a socio-economic system that presents difficulties in terms of risk of poverty, low income, social exclusion, unemployment or lack of social facilities. As the CEDAW pointed out, women belonging to particular categories are made more vulnerable, as in the case of Roma women, elderly and young women, women inhabiting in rural areas or women who are single parents and have dependent children. Secondly, women in Romania are situated in a disadvantaged position in comparison with their male peers. They are less active on the labour market, receive lower salaries and are concentrated in sectors of the economy that are less valued. The gender gap regarding time is one of the highest in Europe, indicating that Romanian women spend more time in giving care to their dependent children or performing

⁶⁷ Idem 54.p. 38

⁶⁸ Idem 54.pag. 40

domestic tasks. In addition, women's representation and participation in decision-making bodies at a national, regional and local level is not significant.

Violence in the family is a wide spread phenomenon in Romania and affects women in a significant proportion. During the last few years, the reporting of such violence increased considerably, albeit a great number of cases pass unnoticed. According to the national study, women are not only indicating that they are victims of different forms of violence. They also reveal that violence happened more than once and was performed, generally, by their partners and husbands.

5 ANALYSIS OF THE LEGISLATION

5.1 INTRODUCTION

In this chapter the legislation regarding domestic violence in Romania will be compared with the provisions of the Istanbul Convention, with brief comments on the Spanish legislation. For the purpose of analysing the Romanian and Spanish laws they were translated by the author into English. The aim is to take an in-depth look into the actual Romanian law that addresses domestic violence. This task is performed in order to highlight the challenges that Romania must tackle for aligning with the standards imposed by the Istanbul Convention once the Treaty has been ratified. The reason behind choosing the Spanish Integrated Protection Measures against Gender Violence Act (hereafter the Integral Act) is the fact that it is internationally recognized as an example of good practice⁶⁹. Moreover, according to academics, Spanish legislation understands domestic violence as a form of gender-based discrimination, which falls under the structural gender equality frame.⁷⁰ In Europe, the Spanish legislation, along with the Swedish, has elaborated a domestic violence policy according to the international framing stipulated in CEDAW General Recommendation No 19 and the UN General Assembly Declaration on the Elimination of Violence against Women⁷¹. For the object of the study, the Spanish legislation will not be compared with the Istanbul Convention, but it is occasionally mentioned in order to provide an example, of what the law could look like.

⁶⁹ HESTER M.; LILLEY S. (2014) Preventing Violence against women: Article 12 of the Istanbul Convention. A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence. p. 15

⁷⁰ According to academics, policy frames in the field of Domestic Violence can be analysed according to the way in which the following questions are answered: What is the problem's cause and whose problem is it? Regarding this approach, the policy can be framed as Gender Equality Frame, Degendered Domestic Violence, Domestic and Violence with Accent on Women as Main Victims Group to mention some. Gender equality frame understands domestic violence as rooted in gender inequality and explicitly identifies women as main victims of this violence. KRIZAN A.; BUSTELO M.; HADJIYANNI A.; KAMOUTSI F.; (2007) Domestic Violence: A Public Matter. p. 144; *Multiple Meanings of Gender Equality. A critical Frame Analysis of Gender Policies in Europe*. Edited by VERLOO M.; CPS BOOKS. CENTRAL EUROPEAN UNIVERSITY PRESS, 2007

⁷¹ KRIZSAN A.; POPA R.M.;(2014) Frames in Contestation: Gendering Domestic Violence Policies in Five Central and Eastern European Countries. Violence against women; Vol. 20 (7), p. 762

5.2 LEGAL ASPECTS IN ROMANIA

The Romanian Constitution, amended and completed in 2003, determines that Romania is a democratic, republic and social state governed by the rule of law. The core values comprise: the human dignity, the citizens' rights and freedoms, the development of human personality, justice and political pluralism. The rights and freedoms contemplated in the Constitution are the right to life, right to physical and mental integrity, right to defence, freedom of movement, individual freedom, personal and family privacy, freedom of conscience, freedom of expression, right to information, right to education, access to culture, right to protection of health, right to vote and to be elected, right to a healthy environment, freedom of assembly and the right of association among other rights and freedoms expressed in the text. Article 16 of the Constitution guarantees equality of opportunities in access to public, civil and military position for women and men.

Different organic and ordinary laws are safeguarding human rights and fundamental freedoms: Civil Code and Civil Procedure Code, Criminal and Criminal Procedure Code, Code of Labour, Law 202/2002 on equal opportunities between women and men, Law 272/2004 on the Protection and Promotion of the Rights of the Child, Governmental Ordinance 137/2000 on the Prevention and Sanctioning of all Forms of Discrimination and the Law 217/2003 on Preventing and Combating Violence in the Family, reformed in 2012. Moreover, the Constitution recognizes that the International Treaties ratified by the Parliament became part of the national law. Romania is party to many of the International Treaties that deal with Human Rights, among which the International Covenant on the Elimination of All Forms of Discrimination against Women (since 1981) and its Optional Protocol (2003) and the Convention on the Rights of the Child and its two Optional Protocols. The Romanian Government recognizes the competences of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) to hear and consider objections from person within its jurisdiction. Moreover, in 1994, Romania became a party to the European Convention on Human Rights, giving the possibility of the people under Romanian jurisdiction to

claim their rights and freedoms granted under the provision of the European Convention⁷².

5.3 ROMANIAN AND SPANISH LEGISLATION TACKLING DOMESTIC VIOLENCE; A COMPARISON

5.3.1 Brief background on the Law preventing and fighting against violence in the family in Romania

In 1995, Minnesota Advocates for Human Rights carried out a study on domestic violence in Romania with the aim of analysing the compliance of the state with their obligations of respect, protect and fulfil women's human rights. The findings highlighted the fact that domestic violence was a widespread problem, which the Romanian Government had failed to address by means of effectively prosecuting the crimes of domestic violence or by failing to ensure adequate health and social services for the victims, to mention some⁷³. During the same year, the Beijing Conference represented a great opportunity to mark Romania's pervasive problematic on domestic violence as well as its lack of policies addressing it. In 1996, through Government Decision No.852/1996 the first Pilot Centre for Supporting Victims of Violence against Women was created in Bucharest, under the Ministry for Labour and Social Affairs, representing the first shelter along with an emergency helpline in Romania; the second one was established in 1998. This year also marked the initiative of senators to amend the Criminal Code in order to increase the punishment for perpetrators that committed acts of violence in the family. Between 1998 and 2001, different actors among which UN bodies, development assistance agencies and women national and international NGOs advocated for a legal reform. In 2001, Romanian NGOs strengthened their efforts for fighting against domestic violence: the Association for the Promotion of Women in Romania drafted a special civil law proposal registered in the Romanian

⁷² A/HRC/WG.6/2/ROM/1 (2008); National Report submitted in accordance with paragraph 12(A) of the Annex to Human Rights Council Resolution 5/1. Romania

⁷³ MINNESOTA ADVOCATES FOR HUMAN RIGHTS (1995) *Lifting the Last Curtain. A Report on Domestic Violence in Romania*

Parliament, along with other two proposals registered by Centre for Mediation and Community Security. In 2003, two main events outlined the situation of women in Romania. Firstly, the creation of the National Coalition of NGOs working to eradicate violence against women, comprising more than 30 women NGOs. Their function was to unify forces and achieve consensus for a new proposal on the law fighting domestic violence. From the organizations participating, a minority of the NGOs were proposing a new law centred on women while the majority opted for a more family-centred framing of domestic violence. Secondly, the adoption of the Law 217/2003 on preventing and combating violence in the family as the result of the civil society and the lobbying of the NGOs with a clear family centred approach. National Agency for the Protection of the Family was founded in 2004 with the aim of implementing the law followed by the elaboration of the National Strategy for Preventing and Combating violence in the family in 2005⁷⁴. According to leading women's rights activists participating in the National Coalition, the year 2003 represented a good momentum to make a real change. This moment was misused due to the fact that the policy outcome focused on domestic violence in the family, and not on women as the main victims⁷⁵. In 2012 the Law 25/2012 brought new provisions on the Law 217/2003 on preventing and combating violence in the family. Although legislators continued to give the same family orientation to the law (mentioning in Article 1(1) the need of protecting and supporting family as a national interest aim) still novelties were introduced: wide understanding of the concept "family", new legal definition on violence in the family and the insertion of the protection order (Article 23). In addition, the Law passed from comprising 31 articles in 2003 to 41 in 2012.

⁷⁴ KRIZSAN A.; POPA R. M. (2014) Frames in Contestation: Gendering Domestic Violence Policies in Five Central and Eastern European Countries. *Violence against women*; Vol. 20 (7) 758-782, pag. 774; POPA R.M. (2007); *Issues Histories Romania: Series of Timelines of Policy Debate*. QUING; European Commission Sixth Framework Programme Integrated Project, pag.76; GHEBREA G.; CRETOIU I. (2002); *Enlargement, Gender and Governance (EGG)*. EU Framework 5, Project No: HPSE-CT

⁷⁵TESIU ROXANA in KRIZSAN A.; POPA R. M. (2014) Frames in Contestation: Gendering Domestic Violence Policies in Five Central and Eastern European Countries. *Violence against women*; Vol. 20 (7), pag. 775

5.3.2 Organic Act 1/2004 on Integrated Protection Measures against Gender Violence in Spain

As a result of the increasing social and political interest for fighting violence against women in Spain, the Integral Act entered into force on 28th June 2005. It is a law designed to guarantee the prevention and protection of women from gender based violence. The Integral Act defines gender-based violence as discrimination against women and gender inequality.

The law contemplates different measures to tackle violence against women, from raising awareness, preventing and identifying early cases to criminal sanctions for the perpetrators, with a total of 71 Articles. The Integral Act, as a holistic law, is divided in different chapters that address specific measures: awareness and educational actions in the media, healthcare environment of the formal education system, the rights of the victims, judicial and penal measures. Among the most noteworthy measures introduced are the Specialized on gender based violence Courts, the improvement of support for the victims and the creation of a special body under the Government competence to deal with this problem or the implication of the Security Forces in order for a better implementation of the protection order⁷⁶.

The Integral Act is a law not free of criticism; according to Carmen de la Fuente Méndez and other experts, the law does not contemplate the wide understanding of gender-based violence⁷⁷. Moreover, the implementation of the law is attributed to different public authorities that include also Autonomous Communities. This circumstance makes the law to be applied uneven in all the Spanish geographical area. Since the aim of this paper is not to look in depth at the Spanish legislation, but to focus the attention on Romanian's one, I will not address all the challenges of the Integral Act. The reader must be aware that even with regard to this Law that is given as an

⁷⁶ EGM/GPLVAW/2008/EP.11 (2008); Spanish Legislation on Violence against women: challenges and facts. DE LA FUENTE MÉNDEZ C.; REINOSO G.B. ; BARRIENTOS SILVA V. (2009); *Violencia de género versus violencia domestica: La importancia de la especialidad*. Revista Venezolana de Estudios de la Mujer, Caracas, Enero/Junio, Vol. 14, N^o 32, opag.29

⁷⁷ Consequently, certain forms of violence such as forced marriages, prostitution, sexist abuse in the working place and other manifestations of violence against women are not covered by the law

example of good practice there is room for improvement both in the legal text as well as in its application⁷⁸.

5.4 LEGISLATIVE ANALYSIS OF LAW 217/2003, ISTANBUL CONVENTION AND INTEGRAL ACT

5.4.1 Legal definition of domestic violence; manifestations, victims and perpetrators

Table 1: Legal definition; manifestations of DV, victims and perpetrators

	ISTANBUL CONVENTION Domestic Violence (DV)	ROMANIA Violence in the Family (VF)	SPAIN Violence against Women (VAW)
LEGAL DEFINITION	Art.3 All acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim	Art.3 Any action or inaction intentionally conducted, physical or verbal, from one member of the family to another member of the same family, that provokes or might provoke damage or physical, psychological, sexual or emotional sufferance, inclusive the threatening with such acts, coercive or arbitration deprivation of liberties	Art.1 (3) All acts of physical and psychological violence, including the aggression to the sexual freedom, threatening, corrective actions and arbitration deprivation of liberties
MANIFESTATION OF DOMESTIC VIOLENCE	Psychological Violence Physical Violence Sexual Violence Economic Violence	Psychological Violence Physical Violence Sexual violence Economic violence Verbal Violence Social Violence Spiritual Violence	Psychological Violence Physical Violence Sexual Violence

⁷⁸ Spain signed and ratified Istanbul Convention in 2014

<p>VICTIMS</p>	<p>Any natural person who is subject to the conduct specified in the concept of domestic violence</p> <p>Women</p> <p>Girls under age of 18</p>	<p>Ascendants/descendants, brothers, sisters, their children, family through adoption</p> <p>(Ex) Husband, (ex) wife; people as similar to husband/wife and parent/child, living together</p> <p>The legal tutor in charge with the rights of the children</p> <p>Legal represents in charge of giving care to a disabled person, with exception workers</p> <p>Women</p>	<p>All women victims of domestic violence</p> <p>Dependent children of the women</p> <p>Public women workers</p> <p>Wife, partner or women that is or has been in an affective relation, regardless if they share or shared the residence</p> <p>Women with a vulnerable situation cohabiting with the perpetrator</p>
<p>PERPETRATORS</p>	<p>Former/current spouses / partners, whether or not living together</p>	<p>Ascendants/descendants, brothers, sisters, their children, family through adoption</p> <p>(Ex) Husband, (ex) wife; people as similar to husband/wife and parent/child, living together</p> <p>The legal tutor in charge with the rights of the children</p> <p>Legal represents in charge of giving care to a disabled person, with exception workers</p>	<p>Former/current spouses / partners, whether or not living together</p>

In the Istanbul Convention, victims are all natural persons who are subjects to the conduct of domestic violence, including men, women and children⁷⁹. In the case of perpetrators, the Istanbul Convention specifies within the definition of domestic violence, former/current spouses/partners whether or not living together. Moreover, the Explanatory Report indicates inter-generational dimension of domestic violence conducted by a person against his/her child or between two or more family members belonging to different generations, regardless residing together or not. In Article 46, when referring to aggravating circumstances to determine the sentence in relation with

⁷⁹ Any person under the age 18 as defined in the international human rights treaties

the offences established by the Convention, perpetrators might be members of the family, person cohabiting with the victim or a person having abused her or his authority. In its Law 217/2003, Romania does not refer to domestic violence as such, but frames this violence within the family centred vision. Generally, the law is gender neutral with the exception of Art.3 (2). This provision states that preventing women from exercising their rights and fundamental freedoms represents also violence in the family.

The first chapter of the reformed Law 217/2003 on preventing and fighting against violence in the family stipulates the scope of the law, the principles, and the legal definition both of violence in the family as well as the concept of family. In Table 1, Romanian law define violence in the family any action or inaction intentionally conducted, except the self-defence or defence, manifested physically or verbally, committed from one member of the family to a person of the same family that causes or might cause damage or physical, psychological, sexual or emotional suffering, including the threatening with such acts, coercive and arbitration deprivation of liberties.

The manifestations of violence in the family stipulated are: verbal (offensive language, insults, threats, humiliating and denigrating language); psychological (imposition of will and personal control, causing tension and psychological sufferance, neglecting, jealousy acts, coercion of any kind); physical (injuries, hitting and shoving, pulling hair, lancing, cutting, strangulating, in any kind and intensity, etc.); sexual (sexual assault, harassment, imposing degrading acts, intimidating and manipulating, brutality in order to obtain sexual relations, marital rape); economic (prohibiting professional participation, deprivation of economic means-food, medicines- deliberative removal of goods of victims, interdiction to possess, use of common goods, inequitable control over the goods and common recourses, refusing to support the family, imposing hard and harmful work, inclusive to a minor family member); social (imposing victims isolation from family, community and friends, prohibiting schooling, detention, inclusive in the family house, depriving from access to information); spiritual (underestimating and diminishing the moral-spiritual needs through prohibiting, limiting, ridiculing and sanctioning the aspiration of family members to access cultural, ethnic, linguistic and religious values, imposing a religion/ religious practice).

As seen in the Table 1, in contrast with Istanbul Treaty's approach on defining domestic violence, Romanian's law incorporates two additional manifestation of violence, namely social and spiritual violence.

Regarding identification of victims and perpetrators, Romania lawmaker uses a gender-neutral terminology and does not establish any specific differentiation between them. Article 5 gives a comprehensive legal description of what is understood as family members, pointing that victims and perpetrators are comprised within the family frame. When referring to victims/perpetrators engaged in relationships as spouses, partners, child/parent or similar relationships, Romanian's law only recognizes violence in the family that occurs when victim and perpetrator lived or live together.

In the Spanish legislation, domestic violence is framed as violence against women, and has the legal definition in accordance with the international standard, as well as the manifestations of the violence. When analysing the victims, they are all women of domestic violence (wife, partners, vulnerable women living with the perpetrators, public working women) and their children, whether they share or have shared residence therefor stressing the gendered dimension of the violence.

In summary, as seen in the Table 1, the main differences between the three different approaches lies, firstly, on the fact that each gives a legal definition to domestic violence and uses a different terminology. Secondly, the Romanian Law does not recognize domestic violence conducted between the persons who are engaged or spouses or child/parent relationship not living together. However, both Romanian law and the Istanbul Convention give a broad understanding on who might be the perpetrators, including, beside current/former spouses/partners, any member of the family, such as fathers, brothers, etc.

5.4.2 Rights of the victims

Table 2: Rights of the victims

	ISTANBUL CONVENTION	ROMANIA	SPAIN
RIGHT TO INFORMATION (use of victims' rights)	Yes	Yes	Yes; comprise information and counselling
RIGHTS SOCIAL ASSISTANCE	No	Yes: Services of counselling, rehabilitation, social reintegration	Yes: social services to attention, emergency, assistance, reception and integral recovery
RIGHTS LEGAL ASSISTANCE	Yes. Art. 57	Yes	Yes: free legal assistance and legal aid
LABOUR RIGHTS AND SOCIAL SECURITY RIGHTS	No	No	Reduction/reorganization of the working time, geographical mobility, change in the centre of work, suspension of work/ extinction of the labour contract, etc.
RIGHTS of the PUBLIC FEMALE WORKERS	No	No	Yes, the same stipulated in the labour rights
ECONOMIC RIGHTS (Social Help and Access to housing /public residence for elderly)	No	No	1) Yes: when victim does not have superior income, will receive one single payment 2) Yes: the victims of gender based violence are considered prioritise group
RIGHTS of PHYSICAL and MORAL INTEGRITY, FREEDOM and SECURITY, RIGHTS of EQUALITY and NON DISCRIMINATION BASED on SEX	Yes (Art. 4(1))	No	Yes
RIGHTS SPECIAL PROTECTION	Yes, Art.56 (2) for the child victim and child witness	Yes; no mention in which consist this right	No mention
RIGHTS MEDICAL FREE ASSISTANCE	No	Yes, according to the law	No mention

The Istanbul Convention refers to a wide variety of services to protect the victims. Regarding to the rights of the victims, as such, are specified in three Articles. Article 4 (1) stipulates the right of all person, in particular women, to live free of

violence both in the private and the public domain. In addition, this article mentions the principle of substantial equality, recognizing the interconnection between the enjoyment of the right to live free of violence and the states obligations to secure and guarantee equality between women and men in all dimensions of human activity. Article 56 (2) refers, beside the states' obligation to protect the rights and the interests of the victims, to the special protection for the child victims and child witness and Article 57, indicates the right of the victim to free legal aid.

Regarding the rights of the victim, in Article 6, Romanian law enumerates them in a broad and abstract way, without elaborating the details. The rights of the victims are: right for respecting his/her personality, dignity and private life; right to information on his/her rights; rights to special protection, according to circumstances and personal needs; rights to access services of counselling, rehabilitation, social reintegration, free medical assistance stipulate in the law; free legal counselling and aid.

For the position of victims, it is enriching to look into the Spanish Integral Act. In the Second Title, Chapter One addresses the rights of the victims in 11 Articles. As it is presented in Table 2, the rights of the victims in Spain are comprising the right to information, rights to social assistance, labour rights and social security rights, rights of the female public workers, economic rights (including social help and access to housing and to public residence for elderly), right to physical and moral integrity, freedom and security, rights of equality and non-discrimination based on sex. The Spanish lawmaker formulates the victim's right with a holistic vision, understanding women's need in all dimensions of life: information, social and legal assistance, labour rights and social security, economic right, etc. Furthermore, the rights are exhaustively described, facilitating the understanding of each right.

In summary the Istanbul Convention highlights the rights of all person, in particular women, to live free of violence both in the public as private domain, among other rights. The Spanish legislation provides a wider range of right to the victims, exhaustively elaborated within the law. In the Romanian law, the rights of the victims are only enumerated, using a open ended language.

5.4.3 Institutions with competences in preventing and combating Domestic violence and their functions

Table 3: Institutions with competences in preventing and combating DV and their functions

ROMANIA		SPAIN	
Institutions	Functions	Institutions	Functions
Ministries, specialized bodies of public and local administration	Develop activities to prevent/fight against VF; Elaborate National Strategies Coordination/monitor of the activities; Train the professionals	Public Administration Authorities	Elaborate planes to prevent/assist /prosecute acts of VAW in collaboration with different authorities
Ministry of labour, family and social protection	Elaborate policies of social assistance Elaborates measures integrate victims of VF in labour market; Train the professionals		
		National Observatory on Violence against Women (Ministry of Work and Social Affairs)	Institutional collaboration/ elaboration of reports/ studies
Department for Equality of opportunities between women and men	Elaborate and implement strategies on gender equality and violence in the family; coordinate	Special Delegation of the Government for fighting VAW	Elaborate public policies on VAW, coordinate/promote actions; coordinate
		Specialized Section under the Security Forces and Local Police	To prevent VAW and control the implementation of the judicial measures; protect the victims,
Probation service under courts	Perform activities for social reintegration of perpetrators		
		Specialized Courts on VAW	Criminal jurisdiction for VAW; civil jurisdiction for family matters
Ministry Health; Ministry of Interior Administration	Elaborate/disseminate documentaries regarding the causes and the consequences of VF	Health Authorities	Promote upgrade and dissemination of protocols that contain uniform guidelines
Ministry of Education, Research, Youth and Sports	Performs activities on VF Elaborate Educational Programmes		
NGOs and Civil Society	Develop activities to prevent/fight against VF;		

The second chapter of the Romanian law presents the institutions with competences to prevent and fight against violence in the family, as shown in Table 3. These are: the Ministries, Specialized Bodies concerned with violence in the family, Public Central and Local Administration, the Department of Equal Opportunities for Women and Men⁸⁰, Probation Service under the Courts, NGOs and civil society (to be in accordance with Art. 7(3), to this list is missing the national human rights institutions).

As is stipulated in Art. 7 of the Istanbul Convention, it is essential that there is coordination between different actors involved in the field of domestic violence via guidelines and protocols for all agencies to follow. In this regard, Romanian Ministries and the other Public Administration have the functions to coordinate and monitor the activities performed in this area, among other tasks. When analysing the functions of the different Romanian institutions that deal with violence in the family, one faces the inconvenience of a broad mentioning of their duties. Moreover, the obligations of the bodies are presented as encompassing all, not delimitating a clear obligation corresponding to which body⁸¹.

For the purpose of this thesis, I will not focus on in the effectiveness of the Romanian Institutions addressing violence in the family, which deserves an in depth analysis as also mentioned in the National Strategic Plan for preventing and combating violence in the family: 2013-2018⁸² (to my knowledge there is no recent available data on this

⁸⁰ Established body responsible for Gender equality that is in charge, since 2015, by means of Governmental Ordinance N°6/2015 with Violence in the family

⁸¹ Public Authorities have the obligations to: take all the necessary measures to prevent violence in the family and the re-victimization of the affected; Ensure victim's rights to information; Include the problem of violence in the family in the strategies and development programs (regional, local); Grant logistical support, information and materials to the bodies working in this field; Elaborate and implement programmes and projects for preventing and fighting violence in the family; Establish, directly or in partnership, unities for preventing and fighting violence in the family; Support the access for perpetrators to psychological, psychotherapy and rehabilitation; Provide annual budget for supporting social services; Allocate from local budget the necessary economic support for legal assistance and the forensic certificate; Collaborate to the implementation of a registration system, report and management of the cases of violence in the family; Collaborate with religious institutions, NGOs ; Establish Interdisciplinary Team for each county

⁸² In defining the problem, the National Strategic Plan identify: the lack of a coherent and functional legislation and joint actions of work, the insufficient development of services, the lack of professionals in this field and their weak training on this topic, and the absence of a non cultural violence culture

topic)⁸³. However, I will consider the lack of agencies that might enforce the successful implementation of the law.

When comparing the Romanian Institutions column with the Integral Act, one can observe three relevant stakeholders with important functions that are missing from the Romanian landscape: National Observatory on Violence against Women, Specialized Sections under the Security Forces and Local Police, and the Specialized Courts on Violence against Women.

As stipulated in Article 11, the Istanbul Convention urges states to undertake a collection of disaggregated statistical data at regular intervals on all forms of violence against women and support research. According to the Explanatory Report, by doing so, the benefits are twofold: on the one hand, to raise awareness among the policymakers and public opinion about the pandemic phenomenon of violence against women, and on the other, encouraging the victims to denounce such acts. For this aim, the National Observatory on Violence against Women in Spain plays an important role by elaborating and disseminating the results of research on gender based violence. In addition, the Observatory is coordinating with Special Delegation of the Government for fighting VAW, with the function of elaborating public policies, to whom provides with evidence-based data. In Romania, the body responsible for elaborating on the causes and the consequences of violence in the family is the Ministry of Health and Ministry of Interior and Administration.

The Specialized Sections under the Security Forces and Local Police in Spain are the mechanisms put in place to prevent, protect and control the enforcement of the judicial measures. The Specialized Sections must perform their responsibilities considering the Protocol of Action of Security Forces and the Coordination with Judicial Bodies for the protection against gender based violence. By means of recognizing the value of this stakeholder, Spain stands by Istanbul Treaty's Article 50 provision that stipulates the need of legislative or other measures to ensure that the responsible law enforcement agencies respond promptly and appropriately by offering adequate and immediate

⁸³ QUING Report gives an insight of the National Agency for Equal Opportunities between Women and Men and the National Council for Combating Discrimination, finding that, in 2007, these institutions were overlapping competencies, which lead to a situation of competition. In Policies and Legislation: 1995-2007; RALUCA POPA, QUING Project, pag.13

protection to victims. The Romanian law refers to the collaboration with the police department when it describes the provisions of the protection order: Article 31 (4) mentions that the police bodies have the responsibility to monitor the way in which the judicial sentence is respected and to notify the criminal investigation body contrary.

Lastly, Spain relies on the Specialized Courts for gender-based violence, namely the Courts of Violence against Women. The Courts deal with gender violence offences and civil jurisdiction for issues that links families to violent act, by magistrates with criminal jurisdiction. In 2008, there were 83 Examining Magistrate's Courts dealing with criminal and civil issues on gender based violence; in addition, the Courts rely on the work of judicial professionals trained in gender aspects and psychologist and social workers (Art. 47 of Integral Act stipulates the training of the professionals of courts).

In conclusion, Romania comprises in its law a number of relevant stakeholders that deals with domestic violence, including the NGOs and the Civil Society. However, is lacking an official body dealing with gathering data, conducting research and disseminating the evidence-based results on the causes and consequences of domestic violence to the public, as the Istanbul Convention stipulate. Moreover, Romanian law should elaborate on the coordination whit an official body such the one in charge with the security forces, for better protection for the victims and enforcement the law.

5.4.4 Protection for the Victims

Table 4: Protection for the victims

	ISTANBUL CONVENTION	ROMANIA		SPAIN	
		Who	Functions	Who	Functions
Support Victims	1) Shelters 2) Specialist support services 3) Specialist women’s support services 4) Telephone helplines 5) Support for victims of sexual violence 6) Protection and support for child witnesses 7) Assistance in individual/collective complaints 8) Adequate and timely information on available support services and legal measures	1) Emergency Centres (shelters) 2) Recovery centres (shelters) 3) Centres for preventing and fighting violence in the family	1) Insure protection, shelter, care and psychological and legal counselling, medical assistance, foo 2) Offers shelter, care, legal and psychological counselling, labour insertion, rehabilitation and social insertion 3) Insure social assistance, legal/psychological assistance, information and orientation of the victims	1) Social Service of Emergency 2) Social Service for Reception 3) Social Services of Integral recovery 4) Social Services of Attention	General Functions
Protection Measures	1) Emergencies barring orders (evict the perpetrator and prohibit contact with the victim) 2) Restraining or protection orders	Protection Order (The same provision includes suspension of communication; eviction of the perpetrator; limitation of the freedom of movement of the perpetrator; suspension of the perpetrator’s right to poses weapons)		1) Protection orders 2) Data protection 3) Measures of eviction of the perpetrator, prohibit communication 4) Suspension of custody or parental rights 5) Suspension of visits rights 6) Suspension of the right to posse weapons	

In its Article 20, the Istanbul Convention stipulates that states parties shall take legislative and other measures to ensure that victims have access to services such as

legal and psychological counselling, financial assistance, housing, education, training and assistance for finding employment. Moreover, the second paragraph of this article mentions that states parties shall ensure that victims have access to healthcare and social services and those services are adequately resourced and professionals are trained to assist victims. Articles 22 and 23 refer to the need of ensuring specialized support centres and shelters in order to deal in a specific sensitive manner with women victims and their children. These facilities must be accessible and sufficient⁸⁴, spread throughout the country in accordance with the specific needs. In addition, the drafters of the Convention recommended minimum standards to consider: individual security plan; technical security of the building (being essential cooperation with the police department for protecting victims and staff). In Article 52, Istanbul Convention introduces the emergency barring orders. These barring orders are established in order to give immediate protection to victims in situations of immediate danger by attaining physical distance from the perpetrator, for a duration recommended between 10 days and 4 weeks.

As is seen in Table 4, Romanian law specifies the services to support the victims: shelters (emergencies and recovery centres) and day-care centres for preventing and fighting violence in the family. Article 17 (6) of Romanian law mention that shelters must collaborate with hospitals or health facilities, but does not refer to collaboration with the police department as is provided in recommendation of the Explanatory Report. In addition, the law does not contemplate a telephone helpline as stipulated in the Article 24 of the Istanbul Convention,⁸⁵ nor the centres for rape crisis or sexual violence⁸⁶ indicated in the Art. 25 of the Istanbul Convention. According to Women against Violence Europe Report,⁸⁷ in 2013 the data on women's centres for sexual violence was limited, and there were no available centres dealing with rape crisis in Romania.

⁸⁴ EG-TFV (2008) 6 is recommending one family place for 10.000 head of population

⁸⁵ This service, according to the Department of Equal Opportunities for women and men is forecast to be implemented this year (Statement from the International Conference on domestic violence, May, 2015, Romania)

⁸⁶ Marital rape is criminalized by the Law 197/2000 of Criminal Code

⁸⁷ LESUR M.; STELMASZEK B.; GOLDEN I.; (2013) Country Report. Reality checks on European Services for women and children survivors of violence. A right for Protection and Support?; Women against Violence Europe (WAVE); VIENNA, pag. 170

The same Report and one joint study conducted by different Romanian NGOs,⁸⁸ found that the number of women's shelters in Romania in 2013 was 41, with roughly 590 beds available, 65% being run by the public authorities while 32% by independent organizations. 26 shelters from the total number were offering short-term emergency services for up to two months, and 15 were shelters for long-term recovery with a limit of accommodation to 6 months (for the private shelters the maximum time can be extended up to one year). The average accommodation in the emergency shelters was 77 days while for recovery shelters, roughly five months. The professionals interviewed for this study confirmed that according to their experience, the victims need at least eight months in order to achieve a normalized life.

Moreover, the NGOs involved in this study established that, according to the Council of Europe Taskforce Recommendations, in Romania 2013, 71% shelters places were missing in order to align with the minimum standards.

The main challenges founded in the present study are the insufficient number of shelters (6 shelters had to reject 119 cases of domestic violence due to the unavailability of places) and the access to the shelters due to the geographical distribution and the eligible criteria for admission (14 counties do not have any shelters; from the total 93 shelters analysed, 37 shelters do not accept alcoholics, drug dependent women; 16 shelters refused women with psychological problems; 7 shelters refused women with contagious illnesses and 4 shelters denied access to disabled women). Other problems that shelters are facing are the lack of initial/continuous training for the specialized professionals (only 11,4% of professionals from 13 shelters out of 93 have had some training in the last three years) and lastly, the lack of public financial support.

Regarding the protection measures, the Istanbul Convention stipulates in Article 53 the need of restraining or protection orders available, regardless of other legal proceedings, for immediate protection and without excessive financial or administrative burden placed on the victim and issued for a specific period and when necessary.

The Romanian Law 217/2003 reformed in 2012, introduced the protection order in its chapter four. The provisions regarding protection order determine a series of obligations and interdictions for the perpetrator, from limiting the freedom of movement,

⁸⁸ Studiu exploratoriu privind serviciile sociale pentru victimele violentei in familia (2013)

interdiction of establishing contact with the victim or their children, the obligation to give the firearms in its possession or to be mandatory part of programmes on psychological counselling and psychotherapy. Likewise, as is stipulated in Articles 31 and 45 (2), the protection order in Romania in Art 23 (h) is specifying the entrusting children's custody to the victim.

For a better understanding on the implementation of the protection order, one joint national study (re) conducted by different NGOs in 2012-2013; respectively 2014, presents the practical challenges that this provision encounters in its application. Although the authors of the report cannot generalize the finding due to the incomplete and non-disaggregated data given by the institutions (Courts; County Police Inspectorate and General Direction of the Bucharest Police), still the results offer a general but relevant overview.

The study analysed 176 Courts that received applications/request for protection orders. Between October 2013 and September 2014 a total of 3088 petitions of protection orders were recorded, 91% of which requested by women. From this total, 1233 were admitted, 863 dismissed, 365 withdrawn by the female victim and 27 by men. From this total, 248 cases were unsolved and 359 suspended, cancelled or other. The numbers of protection orders have risen in comparison with the first report for all cases previously listed.⁸⁹

The average time at the national level to solve the petitions of protection orders was increased from 33,1 days (2012-2013) to up to 37 days in 2014.

The Romanian law provides the temporary removal of the perpetrator from the joint residence even when the perpetrator is the holder of the property. The results of the study showed that from 1233 cases of protection orders admitted, only 164 disposed the temporary eviction of the perpetrator from the house.⁹⁰

When asked the County Police Inspectorates about the enforcement of the protection orders, 35 from 41 of these national institutions replied with no disaggregated data on the 534 cases recorded. These institutions have seized 144 cases where the perpetrator violated the protection order and another 127 cases became criminal cases. Furthermore,

⁸⁹ Studiu la Nivel National cu privire la implementarea ordinului de protectie-Legea 217/2003 pentru prevenirea si combaterea violentei in familia, republicata (2014)

⁹⁰ Idem 78

12 of the County Police inspectorates submitted disaggregated data that could be analysed. These County Police registered 2581 complaints filed by mostly women concerning violence in the family, with a proportion of withdrawing cases in 60% of the cases.

Among the challenges for an effective implementation of the protection orders, authors pointed out the lack of a Procedural Protocol to Implement the Protection Orders. In addition, in order to assess the effectiveness of this provision they found essential that institutions collect disaggregated data on relevant items such as the protection measures accorded to the victims, social services that victim access and the sanction for the perpetrators (in accordance with Article 11 of Istanbul Convention). Moreover, the authors of the study mentioned the need of introducing the emergency barring orders into the Romanian law. Another challenge according to the finding of the study is the lack of data protection when analysing the court files, finding information that might identify the victims.

As seen in the Table 4, the Spanish Law stipulates as a protection measures the access to social services of emergency, reception, integral recovery and social services of attention. The law stipulate the coordination between different stakeholders, such as the healthcare services, the Specialized Courts and the Security Forces. Moreover, when victims need to access the labour market, special measures of labour insertion are offered by the means of a labour plan. The support measures are provided for the victims and their children. When looking into the protection measures, the Spanish legislation stipulate the existence of protection orders, data protection, eviction of the perpetrator and interdiction of any kind of communication between the victim and the perpetrator, suspension of the custody, parental rights and visits rights and suspension of the right to possess weapons. The protection order in Spain is a legal instrument that, once granted, is activating all the social measures in the service of the victim. It can be request by the victim, by the descendants or the ascendants of the victim, the brothers, sisters, the Fiscal Ministry or judicial bodies and the organizations working in the field of domestic violence. In the Spanish Integral Act, once the victim denounces such acts

of domestic violence, the law stipulates that the protection order requirement must be solved in maximum three days⁹¹.

5.4.5 Civil and Criminal Sanctions

Table 5: Civil and Criminal Sanctions

	ISTANBUL CONVENTION	ROMANIA	SPAIN
Fines Sanctions (Specify as such in the Law)	NO	YES	NO
For Perpetrator	No	Yes	No
For Victim	No	Yes	No
For Professionals	No	Yes	No
Withdrawal of the parental rights	Yes (Art.45 (2))	Mentioned in the Protection Order	Yes
Criminal Offences (Mentioned as such in the Law)	YES	NO	YES
Protection against injuries	Yes (Art.35)	(Art.199 Violence in the Family- Criminal Code) Mention aggravating circumstance when violence is conducted by family member by increasing the sentence with a quarter Art.193 Injuries and other violence acts causing physical sufferance is sanctioned with imprisonment from 3 months-2 years	Yes (Art.148 Criminal Code-and Art.36 Integral Act) Imprisonment 2-5 years Aggravating circumstances: -if perpetrator used object, weapons or putted in danger life victim - If victim is less 12 years/unable -If victim was/ is wife/partner -If victim vulnerable living with perpetrator
Offence against physical/psychological integrity (no matter the intensity of the damage)	Yes (Art.33; 35)	No	Yes (Art. 153 Criminal Code and Art.37 Integral Act) Imprisonment 6 -12 mounts
Protection against threatening	Yes (Art.33)	(Art.193 Criminal Code) Imprisonment 3-12 months when act on family members	Yes (Art.171 Criminal Code and Art.38 Integral Act) Imprisonment 6-12 months or community work

⁹¹ Idem 78

Protection against coercion	Yes (Art.33)	No	Yes (Art.172 Criminal Code and Art.39 Integral Act) Imprisonment 6-12 month
Breaches of the protection order	Yes (Art. 53(3))	No	Yes (Art. 468 Criminal Code)
Protection against harassment	Yes (Art.34)	(Art. 208 Criminal Code) Imprisonment 3-6 months or fine	No

Under the criminal law perspective, Istanbul Convention requires states parties in Article 33, to criminalize psychological violence that is impairing a person's integrity through coercion as well as the physical violence, stipulated in the Art.35 and stalking, indicated in the Article 34. The withdrawal of parental rights is established the Art.45 (2), if the best interest of the child, which may include the safety of the victim. Article 46 urges states to take into consideration aggravating circumstances in the determination of the punishment of the perpetrators, when offences are conducted by family members; repeatedly, committed against a person made vulnerable by a particular circumstance, offences committed to a child or in the presence of a child, offences committed by two people or more people together, using a weapon or offences accompanied by an extreme level of physical violence. Art. 53 (3) urges states parties to take measures to ensure that breaches of restraining orders or protection orders shall be subject to effective, proportionate criminal or other sanctions.

When looking to Table 5, one can observe two main differences between the Romanian law and the Spanish Integral Act. On the one hand, the Romanian law only stipulates within its provisions the economic sanctions for professionals, perpetrators and victims⁹². On the other hand, the Integral Act does not mention economic fines, but stipulates within chapter IV, the criminalization of domestic violent behaviour of perpetrators. By means of introducing in the Integral Act, articles of the Criminal Code that deals with such cases, it can facilitate the understanding of the dimension of the

⁹² Art. 40(2) stipulates that the refusal to leave the shelter, regardless the reasons, once the conditions of being there were solved, constitutes an offence and will be sanctioned with an economic fine

criminal sanctions.

In the case of Romanian Law, one must refer to documents that firstly identify the articles that criminalize the perpetrators and subsequently look into the Criminal Code provision's in order to find the specificity of the law in such circumstances. From the examination of the new Criminal Code's provisions, the results are the following: Article 199, Violence in the family, only stipulates the aggravating circumstance when one member of the family commits violent acts to another member of the same family⁹³. When looking into Article 46 of the Istanbul Convention, the aggravating circumstances are the same as mention in the Romanian Criminal Code in addition to repeated offences (or related offences) of the perpetrator; when the offence was committed against a person made vulnerable (similar provision found in Art.77 (e) of the new Criminal Code in Romania on aggravating circumstances); the offence was committed against or in presence of a child; when the offence was committed by two or more people acting together (Romanian Criminal Code mention at least three people acting together in Art.77 (a)); the offence was preceded or accompanied by extreme levels of violence, using a weapon or the offence resulted in severe physical or psychological harm for the victim and the perpetrator had previous been convicted of offences of a similar nature.

Furthermore, Article 193 of the new Criminal Code stipulates that the injuries and other acts of violence when caused physical damages will be sanctioned with imprisonment of the perpetrator, member of the family, between 6 months and 5 years. The severity of the violent act will be evaluated according to the numbers of days under medical care, not more than 90 days. This article also refers to the possibility of starting prosecutions of the offences by the authorities.

Spain on the other hand stipulate within the law all the criminal sanctions, referring to the Articles from the Criminal Code. In this regard, is very clear what are the duties and the sanctions for the perpetrators. The aggravating circumstances in Spain legislation comprise acts of violence when the perpetrator used an object or a weapon, when putting in danger the life of the victim, when the victims is under 12 years or disabled, if

⁹³ The understanding of the concept family is the same as stipulated in the Law 217/2003 and the Law 146 of Criminal Code

the victim have or had a affective relationship with perpetrator and if the victim, vulnerable by different circumstances, is living with the perpetrator.

5.4.6 Prevention Measures

Table 6: Prevention Measures

	ISTANBUL CONVENTION	ROMANIA	SPAIN
Preventive measures mentioned in the law as such	Yes	No	Yes
Awareness educational measures	Yes (Art.14 (1))	Yes (Art.21)	Yes
Education	No	Yes (Art.10)	Yes
Schooling for child	No	No	Yes
Promote equality	Yes (Art. 14 (1))	No	Yes
Indicial/lifelong training	Not specify as such	No specify as such	Yes
Media	Yes (Art.14 (2))	No	Yes
Healthcare	Yes (Art.17)	No	Yes
Sensitization	No	No	Yes
Commission against VAW	No	No	Yes
Training Professionals	Yes (Art.15)	Yes (Art.12)	Yes
Healthcare	Nor specify as such	Not specify as such	Yes
Educational	Nor specify as such	Not specify as such	Yes
Judicial /Police	Nor specify as such	Not specify as such	Yes
Empowerment	Yes (Art. 12 (6))	No	No
Support Programmes perpetrators	Yes (Art.16)	Yes (Art.19 (1))	No
Private Sector	Yes (Art.17)	No	No

Istanbul Convention, in Article 12, indicates the general obligation of states under the umbrella of prevention in the wide sense, stressing the need of societal

transformation of attitudes and gender stereotypes in order to prevent and fight violence against women and domestic violence. In this regard, guidelines of social interventions are established in this article, such as taking into consideration the people made vulnerable; encouraging all members of society, especially men and boys, to contribute actively to prevent all forms of violence against women and domestic violence, and to promote programmes and activities for the empowerment of women.

After presenting the general obligation on prevention, Article 13 of Istanbul Convention focuses on awareness as a strategy of training society to recognize violence against women and domestic violence and its different manifestations. This obligation entails the implementation of programmes and awareness raising campaigner design and disseminated in a gender sensitive manner. Article 14 requires the introduction in the formal and informal educational system of the promotion of gender equality and the non-violent interpersonal relationship. Furthermore, the obligation of education embraces the sports, cultural and leisure facilities and the media. Regarding the training of professionals Article 15 sets the obligations on states to provide with knowledge and skills all the relevant actors involved in preventing and fighting violence in the family and domestic violence. The training should comprise prevention and detection measures, equality between women and men, the needs and rights of the victims and how to prevent secondary victimisation. The drafters of the Istanbul Convention, in addition, recommend that the relevant training programmes should become protocols and guidelines as references to follow for professional belonging to a variety of fields. Finally, Article 17 includes two stakeholders that states are obliged to encourage their participation in the development of policies and its implementation: the private sector and the media. In addition, there are wished to set guidelines and self-regulatory standards to prevent violence.

Looking at Table 6, one can easily perceive that Romanian Law is lacking measures to prevent violence in the family. In contrast with the Integral Act, Romanian law does not have a chapter or a section of the law where prevention measures as such are addressed. Still, some measures can be detected within the provisions. For example, regarding awareness and educational measures, Article 21 of the Romanian law refers to the centres for information and sensitization of the population with the competences of

informing and educating society, among offering social assistance, helpline telephone for emergency cases and counselling. In addition, Article 10 mentions educational programmes for parents and children for preventing violence in the family as part of the attributions to be accomplished by the Ministry of Education; Article 12 specifies the institutions in charge with the training of the professionals from the field of violence in the family without identifying these professionals. Finally, Article 19 refers to the centre for the perpetrators as institutions where services of rehabilitation, social reintegration and education will be provided. Clearly, preventive measures founded in Romanian law are not under the prevention framing, but they are linked to the duties or competences of some of the institutions.

A provision on empowerment of women like Art. 12 of the Istanbul Convention cannot be found in the Romanian law as expected, since prevention measures are lacking overall, but it is addressed in the Integral Act, not as a preventive measure, but as an intervention of the integral social assistance.⁹⁴

One of the strength of the Integral Act is that stipulate, with a holistic perspective, the prevention measures the awareness raising and early detection of gender-based violence. In this regard, the law recognize the main stakeholders involved in the prevention measures: educational system, the healthcare system and the media. For each of the actors participating, the law establishes, in a detailed manner, the actions to be taken. As example, in the education section, the law stipulate the introduction in the curricula of materials to work on gender equality and conflict resolution, throughout all levels of education. Moreover, it stipulates the training of teachers in issues of gender equality, early detection of gender base violence cases and others. The measures are implemented through the National Plans of Sensitization and Prevention against gender based violence.

In summary, while the Spanish legislation and the Istanbul Convention elaborate on the prevention measures, tackling domestic violence from different angles, Romanian legislation lacks such approach within the law, although occasionally makes some

⁹⁴ Integral Act (2004); Article 19 (2f); Preventive training in gender equality values addressed to personal development and the achievement of non-conflict resolutions skills

references. Moreover, the Istanbul Convention stipulate the importance of addressing preventive measures such as the empowerment of women and promotion of gender equality.

5.4.7 Financial Resources

Table 7: Financial Resources

	ISTANBUL CONVENTION	ROMANIA	SPAIN
Financial Resources (Specify as such in the law)	Yes (Art. 8)	Yes (Art. 36)	No
State budget	-	Yes	-
Budget from external credits with reimbursement	-	Yes	-
Budget from the external funds no reimbursement	-	Yes	-
Local Budgets	-	Yes	-
Donations, sponsorship	-	Yes	-

Article 8 of Istanbul Convention entails the obligation of states to allocate adequate human and financial resources to fighting violence against women, not only for NGOs and civil society but also for the public authorities that work in the field of domestic violence. The notion of adequate financial and human recourses will be establishes by the state, the drafter of the Convention being aware of the economic discrepancies within the European landscape. The Romanian law stipulate in its chapter five the funding of the activities in the field of violence in the family as can be seen in table 7.

Spain on the other hand does not elaborate on the funding of the institutions within the articles of the law. However, in the last section, additional dispositions indicates that the

social services will be financed through a fund dedicated to the Autonomous Communities responsible with examining the needs, the available resources and services, and the impact that gender based violence has in each Community⁹⁵.

5.5 Conclusions

The Romanian constitution amended and completed in 2003 comprises the core values of human rights, not only under the umbrella of principles, rights as freedoms, but also materialized in the different Codes. Romania is a party to the majority of international Human Rights treaties including the International Covenant on the Elimination of all forms of discrimination against women since 1981 and its Optional Protocol since 2003.

Domestic violence started to be an issue of public concern in Romania in 1995, as a consequence of the Beijing Conference. After this year, minimal initiatives to support victims of domestic violence slowly became visible. Between 2001-2003 the mobilization of different NGOs, in corporation with other bodies, marked the starting point to amend the Criminal Code. Year 2003 represented an opportunity to advance in women human rights but misused according to some academics. The outcome of the law was a family-centred and open-ended legislation that did not focus on the victims' needs. The incapacity of the law 217/2003 to prevent and protect women from domestic violence caused in 2012 the reform of the law introducing new provisions. While Romanian women's NGOs were striving for changes on domestic violence, on the other side of the continent, Spanish women's NGOs, civil society and the public opinion were lobbying for reforming their legislation preventing and combating violence against women. The result was the Organic Act 1/2004 on Integral Protection Measures against gender-based violence, a law that deals with domestic violence from a holistic approach.

⁹⁵ Ley Orgánica 1/2004 de 28 de diciembre, de Medidas de Protección Integral contra Violencia de Género, p.36

Regarding legal frames on domestic violence, Romania refers to violence in the family, while the Spanish legislation refers to violence against women. The manifestation of domestic violence passes from encompassing all the manifestation in Romanian law to four manifestations in the Integral Act in Spain. Victims and perpetrators are seen in Romania as any member of the family when sharing residence while the Istanbul Convention define victim/perpetrators regardless joint residence.

The Romanian law only enumerates the rights of the victims, short in numbers, without going into details. The Integral Act elaborate in depth on a wide range of rights, among which labour and economic rights. Regarding institutions, the main findings are the absence of possible relevant stakeholders in the Romanian law, such as a National Observatory on Violence against women in charge with conducting research and producing report (Art.11 Istanbul Treaty); the Security Forces to enforce the compliance of the judicial sentences and the Specialized Courts on Violence against women. In the Romanian law, the support measures are aligning with the provisions from the Istanbul Convention (exception telephone helpline and specialized centres for victims of sexual violence). However, in practice, the capacity of solving women's need is limited due to multiples institutional challenges. Regarding the safety measures, the reports of NGOs indicates that the protection orders in Romania are a tool that in practice are not offering a real, effective protection to women and their children.

The Romanian legislation does not contemplate the criminal provision within the law. One must refer to the Criminal Code in order to understand what the sanctions for the perpetrator in different circumstances entail. The prevention measures are another element that is absent from the Romanian law, although are mentioned, occasionally, in a number of the provisions. In order to align with Istanbul Convention, Romania should address the prevention measures such as aware raising campaigns, education; training for the professionals and the participation of NGOs, civil society, private sector and the media in the development and the implementation of the policies regarding domestic violence.

The overall conclusion on Romania is the fact that there are a number of problems to be tackled in order to stand up with the standards imposed by the Istanbul Convention. As

this study focused on a higher degree on the legislation rather than the practice, main challenge represent the amendment of the Law 217/2003 on the provisions that were analyses previously in this chapter. As we have seen, examples of good practices are available in other legislations beside the guidelines indicates in the Istanbul Convention. Thereby the Romania legislator might consider a public policy evaluation on how the Integral Act could be adapted to the Romanian context.

6 CONCLUSIONS AND RECOMMENDATIONS

6.1 POSITIVE ASPECTS

A positive is the fact that the law tackling domestic violence in Romania has been the object of modifications in the last years. The year 2012 marked a moment of reform: the amendment of the legal definition on violence in the family and its manifestation, the extension of the legal understanding of family and the insertion of a new article regarding the protection order, complying with the CEDAW recommendation from 2006. Moreover, small improvements are currently introduced, such as the Governmental Ordinance N°6/2015 which establishes the competences of the Department on Equal chances between Women and Men to deal with violence in the family. This continuous transformation of the law, as well as the Conferences on domestic violence denotes, in my understanding, the fact that domestic violence is a concern of the policymakers. To which extent and why lawmakers are concerned with violence in the family phenomenon in Romania, remains to be seen in the future, considering that the Istanbul Convention is ratified and the strength of the civil society who is lobbying for it.

When looking into the positive aspects of the Romanian Law 217/2003, one must address the fact that the legal definition of violence in the family is wide and in line with the General Recommendation n. °19 frame of violence against women. Moreover, the manifestations of such violence under the Romanian Law are largely elaborated in detail, stipulating the provision in accordance with Istanbul Convention, and improving by adding Social and Spiritual Violence to the definition.

Another point is the fact that victims are perceived to be any natural person belonging to a family, former and current partners and husband/wife, which corresponds with the framing of victims in the Istanbul Convention. In this way, the two dimensions of domestic violence are encompassed: intimate partner's violence and inter-generational violence. Also, the law states that women are made victims due to the fact that their use of rights and fundamental freedom are limited. The way victims are framed also applies

to perpetrators, meaning that any member of the family, who uses violence against another family member, will be considered as perpetrator.

A positive aspect regarding institutions is the fact that since 2015, the Department of Equal Opportunities for Women and Men has the competences to deal also with violence in the family, beside gender equality. This might materialize in more efficient institutions. Under the Ministry of Labour, Family and Social Protection, the Department is responsible for elaborating and applying the strategies, regulating and coordinating the advancement of women's right. In addition, the law stipulates the participation of NGOs and civil society in developing and applying activities regarding ending domestic violence, in accordance with the standards established by the Istanbul Convention. Also positive, is the fact that the law refers to a probation service overseen by the court that deals with the reintegration of the perpetrators in the society.

6.2 NEGATIVE ASPECTS

A negative aspect of the Romanian law is precisely the name that the lawmakers are using when addressing domestic violence: law on preventing and combating violence in the family. As is stipulated in Article 2 of Istanbul Convention, domestic violence affects women disproportionately. Using a family centred approach to address a phenomenon that is distinctly gendered, implies omitting the gender-biased dimension of domestic violence and its implication. In this regard, the Istanbul Convention is very clear in Article 1 (b) stressing the link between gender inequality and violence against women and domestic violence. Moreover, the law is gender neutral, once more neglecting the fact that women are disproportionately affected by domestic violence.

When referring to victims and perpetrators, whether for current or former partners, husband/wife, the joint residence is one of the conditions for the applicability of the law 217/2003. As we have seen, the Istanbul Convention acknowledges the extension of domestic violence and stipulates its occurrence independent of whether or not the perpetrator currently shares or has shared the same residence with the victim.

Another problem is the fact that the law is not encompassing a wide range of rights for the victims. Although the law stipulates that victims have the right to have their personality, dignity and private life respected, the right of victims, particularly women, to live free from violence as Article 4 (2) of the Istanbul Convention states, is not mentioned. In addition, the rights are only enumerated, in a general and indefinite language.

Looking into the institutions, the most relevant absence is a body in charge with collecting, analysing and disseminating the research on domestic violence. Article 11 of the Istanbul Convention stresses the need of conducting surveys, supporting research and collecting disaggregated data in order to evaluate the policies improvements and the need of the victims. In comparison with the Spanish legislation, one might consider the absence of institution acting as a special security force to enforce the law can be seen as a shortcoming of the law.

The fact that the law stipulates the existence of different shelters and centres dealing with domestic violence is not a guarantee that the needs of the victims are met in practice. The absence of a geographically widespread of shelters and the lack of available places represents a violation of the victim's rights as stipulated in Article 6 (c) of the Law 217/2003. The incorporation of the protection order in 2012 represented a step forward for women's protection that however does not achieve its full efficiency due to the lack of enforcement and technical procedures. The absence of telephone helplines is another negative aspect to be considered.

Regarding the civil and criminal sanction, the pitfall of the law lies, firstly, in the fact that only the economic sanctions are stipulated. In addition, while the Istanbul Convention highlights that victims experience shall be a benchmark crosscutting all provisions, the inconsistency of the Romanian Law lies in the fact that victims can be economic sanctioned in some circumstances.

The lack of the criminal provisions in the Law makes understanding the sanctioning of the perpetrators difficult, especially since the Criminal Code is undergoing reforms. The aggravating circumstance under the Romanian law only contemplates violence

committed by a family member, excluding the other possibilities as mentioned in the Istanbul Convention⁹⁶.

Another shortcoming in the law on preventing and fighting against violence is the lack of prevention measures. The law only refers to some prevention measures in an indirect manner by referring to institutions or other elements of the article. In addition, the prevention measures lack aspects of empowerment of women or promotion of gender equality, as stipulate in Istanbul Convention.

6.3 RECOMMENDATIONS AND SUGGESTIONS

After undertaking the study, pointing out the most relevant aspects that must be considered by Romania in order to stand up to the international standards the secondary aim of addressing possible solution is presented next. For that, the author provides recommendations according to the main findings and indicates what is considered as opportunities to end domestic violence in Romania.

The recommendation is to amend the Law 217/2003 to align with the Istanbul Convention. Firstly, the name of the law should be changed in accordance with the approach of the Istanbul Convention: from violence in the family to domestic violence. The Article 1 of the law, regarding the purpose and scope, should recognize that domestic violence is rooted in gender inequality and discrimination against women that affect women disproportionately, which is a distinctive feature to the family centred approach. By doing so, the legislator would have an adequate conceptual framework of domestic violence to guide throughout future provisions, by tackling and protecting the needs of the victims, mainly women, instead of protecting the family.

Art.46 ... in presence of a child; on a person made vulnerable; committed by two or more people acting together; the offence was preceded or accompanied by extreme levels of violence, using a weapon or the offence resulted in severe physical or psychological harm for the victim and the perpetrator had previous been convicted of offences of a similar nature

The section defining the victims and perpetrators, one major change is needed, namely stipulating that domestic violence affects victims regardless of whether a shared joint residence with the perpetrator is or was the case, as already stated in the Istanbul Convention.

When looking into the rights of the victims stipulated in the law, and considering the disadvantaged position of Romanian women, as has been pointed out in chapter four, extending the rights appears mandatory. As an example, economic rights and labour rights could be introduced as additional protection measures to overcome the gendered position of women in the society. Moreover, the rights should be elaborated more comprehensively to facilitate its understanding.

In terms of institutions, the recommendation is the establishment of an official body, whether it is an already existing one or a new one, with the competencies of conducting research on the causes and consequences of domestic violence. In this regard, an Observatory dealing with women's human rights is essential to tackle domestic violence grounded on empirical data. Another important element represents the coordination with the national Police Department or another institution that deals with citizen security. The Romanian Law should recognize the functions and competencies of this important stakeholder within the law. After conducting the study and looking into the available data on institutions, it is advisable to evaluate the efficiency of the institutions dealing with domestic violence regarding their weaknesses and strengths, and to put appropriate measures in place to increase their efficiency.

Regarding support and protection of the victims, the enforcement of protection orders, by means of better coordination between the different actors, needs to be enhanced and the use of the Procedural Protocol needs to be increased. Regarding shelters and their limited geographical distribution and capacity, the Government should consider the option of using the centres to host the perpetrators instead of the victims, since the protection orders stipulates the eviction sanction and the mandatory psychological therapy. Regarding the Criminal Code, the recommendation is to include the civil and criminal sanctions within the law. Moreover, in order to align the law of violence in the family with the standards imposed by the Istanbul Convention, the Criminal Code should address the aggravate circumstances in a wider manner.

When looking into the prevention measures, it is judicious to dedicate one detailed chapter of the law, describing what the measures and the identified actors involved in preventing domestic violence are. Moreover, the Istanbul Convention offers guidelines on how prevention measures can be approached. The inconsistency of the name's law and the absence of preventive measures must be solved.

6.3.1 SUGGESTIONS

Conducting the research, some aspects called the attention of the author and allowed to elaborate some suggestions.

Firstly, Romania should consider sending an updated report to CEDAW, since the last Report was submitted in 2006. By doing so, the professionals of domestic violence will deliver valuable data on the phenomenon, highlighting the practical challenges of the law. In addition, the Special Rapporteur on Violence against Women can be invited to conduct research on Romania, bringing a new outlook on violence against women and domestic violence in the Romanian context.

Furthermore, as CEDAW already pointed out in 2006, women in the decision-making bodies are less representative, a situation that continued since 2006. As is stipulated in Art.1 (b) of the Istanbul Convention, parties must promote substantive equality between women and men, including empowering women. In this regard, the suggestion is to implement a quota system for women in the political institutions.

Despite all this, there is a silver lining. On the one hand, the fact that the Judicial System is undergoing reformations may allow for introducing a Specialized Court dealing with violence against women and domestic violence, as it is in the case of Spain. The Specialized Courts could improve the protection of women by accelerating the judicial procedures in a system that is overloaded with cases, as the European Commission pointed out. By doing so, the time of procedures can be reduced, permitting victims to have access to protection order and other measures, such as in Spanish case, where the law stipulates a maximum 72 hours for offering victims protection orders.

On the other hand, the preparation for ratifying the Istanbul Convention can represent a great instrument for civil society, NGOs and generally different actors for lobbying not only for ending violence against women and domestic violence, but also for gender equality. Since we have seen that the Istanbul Convention is not just a criminal law or human rights treaty, but a gender equality instrument, the author considers that the preparation for ratifying must be taken as a momentum for women advancement. In this sense, the suggestion goes toward the professionals of this field, NGOs and civil society to unify forces in order to push for women human rights development. Moreover, considering the fact that Romania has still a low rate of European funds absorption, the author observe a possible opportunity for NGOs to finance their activity by the means of EU funds.

As a last suggestion and future line of investigation, is the analysis and evaluation, in depth, of the Integral Act in order to assess its applicability in the Romanian context in conjunction with the standards of the Istanbul Convention. The Romanian legislator could put remedies to the Integral Act critics by looking into the Istanbul Convention, and, when Istanbul Convention falls short in practical measures, look into the Spanish legislation.

As a general conclusion on the study, the author wants to indicate that the Istanbul Convention represents an important opportunity in order to end violence against women and domestic violence in Romania. The fact that Romania signed the Convention and is preparing for its ratification represents a state of intentions of the Romanian authorities that must be seized by all the stakeholders in ending domestic violence.

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