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IS THE RESTRAINING ORDER O SOLUTION AGAINST DOMESTIC VIOLENCE?

Calina Andreea GARDIKIOTIS¹

Abstract

Romania is one of the EU member countries with one of the largest number of cases in terms of domestic violence, most of the victims being females. In order to stop such facts, on July 21st, 2018, Law no. 174/2018 came into force which modifies Law no. 217/2003 on the preventing and fighting against domestic violence and within which the temporary restraining order was introduced. This order can be issued by a police officer, when the life, the physical or mental integrity of a person is endangered by a family member. This change, that came into force in December 2018, at the legislative level, seems to be among the best in Europe. It is interesting to see how the legislation reached this level, how the restraining order appeared in Romania, but also why it is not sufficient in the romanian system, that still has many gaps, minimal resources and high tolerance for domestic violence.

Keywords

Domestic violence; restraining order; temporary restraining order; Law no. 217/2003; higher punishments for aggressors.

Romania is one of the UE member countries with one of the largest number of cases in terms of domestic violence, most of the victims being females. In order to stop such facts, on July 21st, 2018, Law no. 174/2018 came into force which modifies Law no. 217/2003 on the preventing and fighting against family violence and within which the temporary restraining order was introduced. This order can be issued by a police officer, when the life, the physical or mental integrity of a person is endangered by a family member. This change, that came into force in December 2018, at the legislative level, seems to be among the best in Europe. It is interesting to see how the legislation reached this level, how the restraining order appeared in Romania, but also why it is not sufficient in the romanian system, that

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still has many gaps, minimal resources and high tolerance for domestic violence.

Romania did not adopt easily the protection order. In the 2000s, the domestic violence was not a topic neither for the press nor for the authorities, but it was a real phenomenon. The first national survey from 2003, revealed that 800.000 women had frequently endured domestic violence in various forms in the last year.

Romania's accession process to the European Union and the pressure from civil society helped the appearance of the first law of preventing and fighting against domestic violence, in 2003. Ever since, several NGOs have called for a protection order, a measure that has existed for years in other European countries, but the authorities have decided that such a measure could violate the constitutional right to property of one of the partners. In 2011, through a protest in front of the Parliament, the civic organizations demanded again the restraining order; Romania was the only EU country that was not implementing it.

In the spring of 2012, a murder – a police officer shot and killed his wife and a colleague and injured six other people - brought back the protection (Saharov & Gorea, 2015) order to attention, after it was found out that, although the woman had filed a complaint at the Police department and stated that she was threatened by her husband, who had a weapon, she did not have any legal measure to protect her and keep him at distance. In 2003, a new provision was added to the Law no. 217: the person whose life, physical or psychological integrity or liberty is threatened by an act of violence by a family member, in order to eliminate exposure to danger, may apply to the court, to issue a protection order.

The restraining order was given by a judge and could evacuate the aggressor from the house, even if it was his property, and force him to keep a minimum distance from the victim, her residence, work or children. In order for a victim to obtain this restraining order, he/she had to submit, in addition to a request to the court, any of the following documents: medical - legal certificate (to prove the physical violence), statements of witnesses, audio - video recordings, criminal complaint for violence filed with the Police. Most of the time, during the period when he/she was trying to gather these documents, the victim continued to live with the aggressor. There was no legal deadline by which the judge decided whether or not to give the order. According to a study conducted in 2014 that, in the first year of implementation of the measure, the average time to obtain an restraining order was 33 days.

Trying to solve the problem of the long period until a victim gets the protection, the NGOs proposed to amend the existing law, and a

maximum term of 72 hours has been introduced for a court to decide on the restraining order. Even so there was still a long time between the violent incident and the day when the victim applied for a court order, along with other evidence. This was the reason why several organizations continued to request a restraining order issued even faster.

In July 2018, Law no.217/2003 was amended again, and from the end of December 2018, the police officers can issue a temporary/emergency protection order on the spot, either after a notification to emergency call 112, or after the victim complains of the abusive situation in writing, on the phone or at the police headquarters. To assess whether the victim is in danger and in need of an restraining order, the police officer administers a questionnaire with 21 questions: Whether the aggressor tried to kill him/her, whether he/she suffered injuries, whether he/she is afraid of him, whether the aggressor is an alcoholic or drugs addict. If the victim answers "yes" to at least two of the first seven questions of the questionnaire or if he/she answers "yes" to at least six of the rest, it means that he/she is at imminent risk and receives the temporary restraining order. Immediately, the aggressor is forced to leave the home. He/she must tell the police where he/she will live temporarily and, if he/she has no place to go, he/she can go to a homeless center.

The police officer hands over the file to a prosecutor, who confirms or overturns the temporary restraining order within 48 hours. Once confirmed, the prosecutor submits it to the civil court, which judges, as before, whether or not the order will be extended for a longer period, of up to six months. By the end of February 2019, the police had issued over 700 temporary restraining orders throughout the country. It is still unknown how many of them were extended by the judges. However, it is a large number; for comparison, in 2017 a total of 2,894 restraining orders were issued, and in 2018, 3,775.

In order to stop the violent acts, the possibility of the police officer to enter the house was expressly regulated, even without the consent of the owner, in order to protect with priority the right to life and physical and mental integrity of the victim.

Some of the measures that can be taken are: temporary removal of the perpetrator from the family home, even if he is the owner of the property; reintegration of the victim, and if the case, children in the family home; order the abuser to maintain a specified minimum distance from the victim, his/her children or other relatives, work or the school of the victim; order the abuser to turn over any firearm and ammunition.

The police officer who issued the emergency restraining order has the obligation to notify the prosecutor's office of the competent court in

whose territorial area it was issued, within 24 hours from the date of issue. The prosecutor has the obligation to determine, on the basis of the documents submitted, in a period of up to 48 hours, whether it is necessary to maintain the order or not. If he finds that it is no longer necessary to maintain the protective (Gorunescu, 2012) measures in place, the prosecutor may stop of the protective measures, stating the time from which they cease. The prosecutor immediately informs the police unit that submitted the emergency protection order, which takes measures to immediately inform the persons involved. In the event of confirmation of the emergency restraining order, the prosecutor shall submit it together with all the documents to the competent court in whose area it was issued, accompanied by a request for the granting of a regular protection order.

The temporary restraining order may be taken for a period of 5 days, which shall be extended until the date of issuance of the regular restraining order, if there is such a request. This temporary order can be attacked within 48 hours of communication. These measures could only be taken by the court, which was required to decide on the restraining order within up to 72 hours. It can be noted that the current legislative changes were intended to help stopping the domestic violence.

The temporary restraining order is a strong measure, but it depends on how it is implemented. In the last years, the changes in the system are seen especially in some police officers, who understand better and better the dynamics between the victim and the aggressor, and who turn to organizations to find accommodation for the victims and legal advice. But these exceptions are not enough for a system to work, especially in small towns or rural areas, where some authorities are still tolerant with domestic violence.

Another problem is that many restraining orders are violated by the aggressors.

The police officers should check whether or not the aggressors respect the territorial limits imposed by the restraining order. It's hard to prove when this limit is violated, in the absence of an electronic monitoring system. The procedure used by police officers is rudimentary and puts pressure on the victim, which must to call the police to report the violation. Violation of the protection order is a criminal offense and it is punishable by imprisonment for one month to one year. In practice, there are few convictions with execution for this violation. Most crimes that fall within the spectrum of domestic and gender-based violence carry sentences of less than five years in prison. Because of this, they are considered crimes with a low level of social danger and few aggressors are arrested, either for hitting or violating the restraining order.

Another problem, which is not directly related to the protection order, is that the victims withdraw their criminal complaints after being hit. They do this either out of fear, because they are threatened by aggressors, or because they do not have the money and energy to carry out a long criminal trial.

Higher punishments for aggressors, in cases of domestic violence and violation of the restraining order could be a solution in preventing and fighting against domestic violence. There are also needed electronic monitoring systems, more resources, more shelters for the victims, legal and psychological services for both victims and aggressors.

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