E-ISSN 3008-6299

THE CRIMINAL SCIENCES JOURNAL
TCSJ
"AL.I. CUZA" POLICE ACADEMY

PRACTICAL GUIDELINES REGARDING VIOLENCE WITHIN THE FAMILY

MIHAELA ROTARU[1]

Abstract: *Violence within the family is a worrying phenomenon at the level of society and requires a multidisciplinary approach to reduce it. In this context, we consider the judicial practice in the field all the more important, in the context of the decision of the High Court of Cassation and Justice no. 58/2023, pronounced to resolve a legal issue, in which it was specified that the incrimination norm contained in art. 199 para. (1)of the Criminal Code is not a stand-alone offense, but an aggravated variant for the offense of assault or other violence, as well as for the other offenses referred to by the legislator in that article. This paper does not aim to analyze cases of domestic violence, in the context in which the latter concept is one with a wider scope than that of violence within the family. The analysis will focus on aspects related exclusively to the way in which the courts have applied the provisions of art. 199 para. (1) of the Criminal Code in specific cases.*

Keywords: *violence; family; crime; judicial practice*

1. Violence within the Family – Conceptual Boundaries

In 2003, Law[2] no. 217/2003 on the prevention and combating of violence within the family was adopted, a law that has been amended, supplemented and republished several times, the most recent amendment being made by Law[3] no. 1/2025 on the amendment and supplementation of Law no. 217/2003 on the prevention and combating of domestic violence.

In the initial form, Law no. 217/2003 defined the concept of "violence within the family" in art. 2 para. (1), as follows: "any physical or verbal action committed intentionally by a family member against another member of the same family, which causes physical, mental, sexual suffering or material damage", as well as "preventing a woman from exercising her fundamental rights and freedoms", according to art. 2 para. (2).

[1] Senior Lecturer, PhD, Public Law Department, "Alexandru Ioan Cuza" Police Academy, Bucharest, Romania, Corresponding author: mihaelarotarumihaela@gmail.com
[2] Published in the Official Gazette of Romania no. 367 of May 29, 2003.
[3] Published in the Official Gazette of Romania no. 26 of January 14, 2025.

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We would like to point out that starting February 1, 2014, the date on which the current Criminal Code[1] entered into force, in art. 199 para. (1) of the Criminal Code, we find a criminalization norm whose marginal name is "violence within the family", which criminalizes any of the "acts provided for in art. 188, art. 189 and art. 193-195 when they are committed against a family member".

We are considering the crimes of murder, aggravated murder, assault or other violence, bodily harm and assault or injury causing death, committed against a family member, within the meaning of art. 177 of the Criminal Code. The High Court of Cassation and Justice ruled on this incrimination norm, by decision[2] no. 58/2023, for the resolution of a question of law, and ruled, among other things, that in the respective article we do not find a separate offense, but an aggravated version of the offense of assault or other violence. *Mutatis mutandis* we consider[3] that we find an aggravated version for any of the offenses referred to by the legislator in art. 199 para. (1) of the Criminal Code[4].

With Romania's accession[5] to the Council of Europe Convention on preventing and combating violence against women and domestic violence[6], signed in Istanbul in 2011, the legislator felt it necessary to amend and supplement the provisions of Law no. 217/2003. Thus, in 2018, through Law[7] no. 174/2018 on amending and supplementing Law no. 217/2003 on preventing and combating domestic violence, the title of the law was also amended, with reference being made, starting with July 21, 2018, the date of entry into force of Law no. 174/2018, to "domestic violence", not to "violence within the family".

Currently, the concept of "domestic violence" is defined in art. 3 of Law no. 217/2003 as follows: "any intentional inaction or action of physical, sexual, psychological, economic, social, spiritual or cyber violence, which occurs in the family or domestic environment or between spouses or former spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim".

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[1] Represented by Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, with subsequent amendments and additions.

[2] Published in the Official Gazette of Romania no. 965 of October 25, 2023.

[3] For details, see Rotaru M. (2025) *Criminal Law. Special Part. Crimes against the Person. Crimes against Property. Crimes against State Authority and Borders. Crimes against the Administration of Justice,* Universul Juridic Publishing House, Bucharest, 2025, pp. 58-59. For the analysis of the impact of the changes in the field of crimes against the person, bearing in mind the decision no. 58/2023, see Barbu I.-A, Rotaru M. (2023), *Impact of Recent Legislative Changes on Crimes against the Person,* in the Criminal Sciences Journal of the "Alexandru Ioan Cuza" Police Academy no. 1/2023, pp. 4-11.

[4] Rotaru M. (2025), *Criminal Law. Special Part. Crimes against the Person. Crimes against Property. Crimes against State Authority and Borders. Crimes against the Administration of Justice*, Universul Juridic, Bucharest, pp. 58-59

[5] Through Law no. 30/2016 for the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, published in the Official Gazette of Romania no. 224 of March 25, 2016.

[6] Published in the Official Journal of the European Union no. L 143l of June 2, 2023, available at: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:22023A0602%2801%29 (last accessed: November 13, 2025).

[7] Published in the Official Gazette of Romania no. 618 of July 18, 2018.

We therefore consider that the scope of the notion of "domestic violence" is broad, including the manifestations that are criminalized in art. 199 para. (1) of the Criminal Code. An additional argument in support of our statements is the fact that in art. 4 para. (1) of Law no. 217/2003 the legislator explains that domestic violence also includes sexual violence, respectively cyber violence, or these latter behaviors, although they are criminalized through provisions in the special part of the Criminal Code, these criminalization provisions are not found in art. 199 para. (1) of the Criminal Code. We have in mind, in this context, for example, the crime of sexual assault, provided for in art. 219 of the Criminal Code, or the crime of harassment, provided for in art. 208 para. (2) of the Criminal Code, these are not included in the criminalization norm in which violence within the family is described.

2. Practical Benchmarks Regarding Violence within the Family

Since 2019, when it issued decision[1] no. 11/2019, in appeal in the interest of the law, the High Court of Cassation and Justice has considered the reference to the crime of assault or other violence committed against a family member, provided for by art. 193 in relation to art. 199 para. (1) of the Criminal Code, and not the crime of violence within the family. This aspect was also reiterated by decision no. 58/2023, mentioned above.

Considering these aspects, all courts in our country should have considered and applied the decisions of the supreme court, given their binding nature. Therefore, at least starting with October 25, 2023, the date of publication of decision no. 58/2023 in the Official Gazette of Romania, the legal classification should have been made considering the specific crime committed, among the five included in art. 199 para. (1) of the Criminal Code, with the application of this article, that is, in the form of violence within the family.

Upon analyzing judicial practice, we found that the situation is not like this, in the sense that there are still courts that trial people for committing the crime of violence within the family.

In a case[2] heard on appeal in cassation, at the level of the High Court of Cassation and Justice in 2024, the court found that the legal classification of the acts committed by the defendant was correct, a legal classification made by the panel at the level of the court of appeal, namely the crime of murder of a family member, an act provided for by art. 188 para. (1) of the Criminal Code in relation to art. 199 para. (1) of the Criminal Code, considering the fact that "defendant A., on 16.01.2022, at around 14:00, amid a spontaneous conflict with his son, victim B., after the latter hit him with a whip, struck him with a knife, causing an injury incompatible

[1] Published in the Official Gazette of Romania no. 477 of June 12, 2019, available at: https://www.iccj.ro/2019/04/08/decizia-nr-11-din-8-aprilie-2019/ (last accessed: November 14, 2025).

[2] Decision no. 179/AC/2024, criminal section of H.C.C.J., available at: https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=219858#highlight=Lovirile%20sau%20v%C4%83t%C4%83m%C4%83rile%20cauzatoare%20de%20moarte (last accessed: November 15, 2025).

with life"[1]. We consider that the legal classification was correctly made, considering decision no. 58/2023, the defendant and the victim having the status of family members.

In another case[2], resolved at the level of a court, the court convicted the defendant for committing the crime of violence within the family, provided for in art. 199 para. (1) of the Criminal Code, reported to art. 194 para. (1) letter e) of the Criminal Code, for the following factual situation: "on the date of 28.04.2025, around 21:30, while they were in the building located in the locality Q, amid alcohol consumption and a spontaneous conflict, defendant A hit his aunt, injured person B, with his fists and feet, in the face, trunk and limbs and grabbed her by the neck, causing multiple traumatic injuries, namely hematomas, ecchymoses of the head, upper and lower limbs as well as at the trunk level, nasal pyramid fracture, multiple rib fractures, lumbar transverse apophyseal fractures, minimal hemoperitoneum with minimal liver rupture, minimal pulmonary contusions with minimal hemothorax, left renal artery rupture and left hilar region hematoma, injuries that require a number of 37-39 days of medical care in case of favorable evolution, the life of the injured person being put in danger"[3]. We consider that the legal classification in accordance with decision no. 58/2023 should have been in the crime of bodily harm committed against a family member or in the violence within the family modality, provided for by art. 194 para. (1) let. e) of the Criminal Code in relation to art. 199 para. (1) of the Criminal Code.

In another case[4], resolved at the level of a court, the court convicted the defendant, among other things, for committing the crime of assault or other violence, in the manner of violence within the family, provided for by art. 193 para. (2) and para. (2^1) of the Criminal Code, with the application of art. 199 para. (1) of the Criminal Code, considering the following factual situation: "on 29.07.2024, while he was in front of the common home located at the address of str. X, sector y, Bucharest, the defendant A physically assaulted his concubine, B, causing her traumatic injuries for the healing of which 5-6 days of medical care were necessary"[5]. We consider that the legal classification of the specific act committed was done correctly, in accordance with decision no. 58/2023.

In another case[6], resolved at the level of the same court as in the previous case, the court convicted the defendant for committing the crime of violence within the family, provided for by art. 199 para. (1) of the Criminal Code, related to art. 193 para. (2) of the Criminal Code, considering the following factual situation: "on 20.08.2025, at around 17:30, while at the address in Bucharest, str. x, sector y, defendant A hit his concubine B with his fists, feet and

[1] Ibid.
[2] Decision no. 207/2025 of November 25, 2025 pronounced by the Târnăveni Court, code RJ 84d58g84d (https://rejust.ro/juris/84d58g84d) (last accessed: November 30, 2025).
[3] Ibid.
[4] Decision no. 3186/2025 of November 27,2025 pronounced by Bucharest District Court 4, code RJ ggd349484 (https://rejust.ro/juris/ggd349484) (last accessed: November 30, 2025).
[5] Ibid.
[6] Decision no. 3089/2025 of November 24, 2025 pronounced by Bucharest District Court 4, code RJ 65gd54683 (https://rejust.ro/juris/65gd54683) (last accessed: November 30, 2025).

several hard objects on the head and body, causing her traumatic injuries that required 3-4 days of medical care."[1] We believe that the court should have taken into account decision no. 58/2023 of the High Court of Cassation and Justice and the act should have been classified as the crime of hitting or other violence committed against a family member, provided for by art. 193 para. (2) in relation to art. 199 para. (1) of the Criminal Code.

We therefore conclude that there is no uniform application at the level of the courts of the legal provisions in force, in view of the above-mentioned decision.

3. Does the Crime of Violence within the Family Exist or Not?

In the context of decision no. 58/2023, given the criminalization provisions in art. 199 para. (1) of the Criminal Code and the different legal classifications established by the courts, as we have shown above, we cannot help but wonder whether the crime of violence within the family exists or not. This question is more relevant since, in 2024, the legislator amended and supplemented[2] the provisions of Law no. 211/2004 on certain measures to ensure information, support and protection of victims of crimes, and established, in art. 14 para. (1), that free legal assistance is granted, among others, to victims of the crime of violence within the family, provided for in art. 199 C.pen.

In the explanatory memorandum[3] to Law no. 272/2024 the legislator speaks of "other vulnerable victims, (...), of domestic violence (...), not of violence within the family. We believe that the legislator wanted to offer increased protection to victims of any of the crimes that fall under the concept of domestic violence, not only those of the aggravated variant, of the modality of violence within the family, of the crimes of murder, aggravated murder, assault or other violence, bodily harm or assault or injury causing death.

Furthermore, in art. 3^1 para. (4) of Law no. 217/2003, the legislator specifies that "in the case of victims of violence within the family, the support and protection services provided for in this law are provided by specialized institutions according to Law no. 217/2003 for the prevention and combating of domestic violence, republished, with subsequent amendments and completions".

We believe that the reference, in the content of Law no. 211/2004, should have been made to victims of domestic violence, not to victims of violence within the family, given that, on the one hand, the scope of the first concept is broad, which includes a series of behaviors distinctly incriminated in the special part of the Criminal Code, as we have shown above, and, on the other hand, the crime of violence within the family does not exist as a stand-alone crime, but

[1] Ibid.

[2] Through Law no. 272/2024 on amending and supplementing Law No. 211/2004 on certain measures to ensure information, support and protection of victims of crimes, published in the Official Gazette of Romania no. 1103 of November 5, 2024.

[3] Available at: https://www.cdep.ro/proiecte/2024/400/40/9/em509.pdf (last accessed: November 17, 2025).

represents the marginal name of an article of the Criminal Code in which we find aggravated variants for certain crimes, as in the case of art. 308 C.pen., whose marginal name is "Corruption and official offences committed by other persons", about which the High Court of Cassation and Justice ruled, by decision[1] no. 1/2015, pronounced for the resolution of certain legal issues in criminal matters, that "the provisions of art. 308 of the Criminal Code represent a mitigated version of the embezzlement offence provided for in art. 295 of the Criminal Code"[2] and, *mutatis mutandis* for all the offences referred to by the legislator in art. 308 paragraph (1) of the Criminal Code.

4. Conclusions

The decisions of the High Court of Cassation and Justice, whether they are for the resolution of legal issues or pronounced on appeal in the interest of the law, are particularly important for the unification of judicial practice. These decisions are binding on the courts and, consequently, the legal classification of the acts held against the defendants should highlight the legal nature of this incrimination norm, namely an aggravated version of some crimes against the person, when they are committed against a family member as a passive subject.

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Law No. 1/2025 on amending and supplementing Law No. 217/2003 for the prevention and combating of domestic violence

[1] Published in the Official Gazette of Romania no. 105 of February 10, 2015.
[2] Ibid.

Law No. 174/2018 on amending and supplementing Law No. 217/2003 on the prevention and combating of domestic violence

Law No. 211/2004 on certain measures to ensure information, support and protection of victims of crimes

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