

THE STATUTE OF LIMITATIONS REGARDING THE OFFENSE OF ASSAULT OR OTHER ACTS OF VIOLENCE IN THE FORM OF DOMESTIC VIOLENCE IN LIGHT OF THE ICCJ RULING

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The offense of battery and other acts of violence, as defined and incriminated by Article 193 of the Special Part of the Penal Code, involves hitting or any other acts of violence that may cause physical harm and as such, is punishable by imprisonment from 3 months to 2 years or by a fine. The material object of the offense is represented by the body of the person upon whom the violence is exercised¹.

Domestic violence is criminalized under Article 199 of the Special Part of the Penal Code², and what distinguishes domestic violence from the offense it refers to, such as the circumstantial element, is the relationship between the victim and the aggressor, in other words, the passive subject must have the quality of a *family member*, regarding the active subject³. The term family member is understood to include ascendants and descendants, siblings, their children, as well as people who have become such relatives through adoption, according to the law; the husband, people who have also established such ties that resemble the ones between husband and wife or the ones between parents and children that they live together, as well as, in case of adoption, the ties between the adopted person and their descendants in relation to their natural relatives. This classification leads to an increase in the penalty limits for offenses committed against family members.

THE NEED FOR INCRIMINATION AND THE LIMITS OF THE PENALTY

Physical violence is the cruelest form of abuse, and the established role of the criminal law is to protect the social values, and the relationships connected to them, including human beings

¹ V. CIOCLEI „Drept penal, Partea specială I – Infrațiuni contra persoanei și infrațiuni contra patrimoniului “ Ed. C.H Beck 2023 București p. 63.

² <https://legislatie.just.ro/Public/DetaliiDocument/109855> accesat 1.03.2025.

³ Op.cit p.103.

and their integrity. Therefore, we are in the presence of the criminalization of the offense of domestic violence, as described above. Unfortunately, this phenomenon is widespread in Romania, where tradition still prevails, and violence against family members is often seen as a form of authority and enforcement, it is perceived as acceptable behavior. Cultural norms regard it as a natural practice, deeply rooted in family customs. The effect of this type of behavior highlights wrong and dangerous beliefs regarding the place of women in society, all while it contributes to a silent acceptance of violence in family life.

In Romania, domestic violence represents a significant problem, considering even the legislation which tries to protect the victims and punish the aggressors. Many victims end up in compliance with the situation that they are in, and the call for help from the authorities becomes an unfathomable option on account of the shaming culture, terms of stigmatization and the lack of trust in the system that should offer protection. Therefore, many cases of abuse remain unreported, and the accumulated traumas remain buried deep in the minds of the victims.

Nonetheless, a life lived in fear and suffering cannot be considered a real life. This is an existence marked by pain and fear, deprived of liberty and dignity. Domestic abuse does not only affect the woman directly but the whole social frame, aiding and abetting a whole cycle of intergenerational abuse. It is our responsibility, societies and lawmakers, to actively intervene to ensure a safe and proper space for women.

In conformity with the Penal Code, battery and other forms of assault are punished with imprisonment ranging from 3 months to 2 years, and in the case of domestic abuse, the limits are majored by one-fourth.

THE PROBLEM OF THE STATUE OF LIMITATIONS REGARDING THE BATTERY AND OTHER ACTS OF VIOLENCE IN THE MATTERS THAT REFER TO DOMESTIC VIOLENCE

As we have previously mentioned, the punishment for battery and other forms of assault is imprisonment from 3 months to 2 years, resulting in the statute of limitations being five years, as it is mentioned in art. 154 alin.(1) lit.d).

In high sight, the offence of battery and other forms of assault, committed in its aggravated form, of domestic abuse, may need a different statute of limitations, as per judicial

practice. For these reasons, the Bacău Court of Appeal – Criminal Section and for cases involving minors and family matters, in case no. 2.168/321/2021⁴, requested the High Court of Cassation and Justice to issue a preliminary ruling on the following legal matter: “Is the general statute of limitations applicable to the offense of assault or other acts of violence, as provided for in Article 154. alin. (1) lit. c) of the Penal Code, or the one indicated in Article 154 alin. (1) lit. d) of the Penal Code, as it is of a legal nature in art. 199 (1) Penal Code that states:

1. As a standalone (autonomous) offense;
2. As an aggravated form of the offense to which it applies (in the first two cases, the general statute of limitations would thus be 8 years); or
3. As a special aggravating factor for the penalty under certain circumstances (in this latter case, the general statute of limitations would be 5 years).

THE HIGH COURT OF JUSTICE INTERPRETATION IN THE MATTER

In the reasoning of the High Court of Cassation and Justice in Decision no. 58/18.09.2023, published in the Official Monitor on October 25, 2023⁵, the legal reasoning supporting the application of the statute of limitations for criminal liability, according to Art. 154 alin.(1) lit. c) of the Penal Code, with the application of Article 199 alin. (1). It derives from the considerations of Decision no. 1/10.02.2015, issued by the Panel for Resolving Legal Issues in Criminal Matters (published in the Official Monitor of Romania, Part I, no. 1045 of February 10, 2015). This decision analyzed the autonomous or mitigating nature, as well as the legal nature of the cause for sentence reduction in the context of Art. 308 of the Penal Code, in relation to Art. 295 of the Penal Code. The High Court of Cassation and Justice in Decision no. 1/2015 established that “an aggravated or mitigated version of an offense requires, first and foremost, the conditions of the standard version, to which circumstantial elements are added. These elements may pertain to the material or moral aspect of the act, its object or subjects, or the place and time of its commission, thereby conferring, in abstract terms, a higher or lower degree of severity.”

⁴https://portal.just.ro/32/SitePages/Dosar.aspx?id_dosar=32100000000061731&id_inst=32 , last accessed 2.03.2025.

⁵ <https://www.iccj.ro/2023/10/25/decizia-nr-58-din-18-septembrie-2023-2/> , last accessed at 02.03.2025.

Therefore, the same act can be incriminated, in addition to its typical form, in one or more aggravated or mitigated versions, which are differentiated by these circumstantial elements and causes for sentence reduction refer to circumstances, situations, or qualities related to the act or the defendant, which can create confusion regarding their effects⁶. The distinction between these lies in the fact that, while the conditions concerning the existence of the offense, although extrinsic to the incriminated activity, constitute a whole part of the content of the incrimination, the causes for the reduction are external to this content and influence only the degree of social danger of the act, serving as criteria for the individualization of the punishment⁷.

Considering the aforementioned reasoning, the legal provisions being interpreted do not merely represent a cause for increasing the punishment. Thorough, the legislator's intent, a specific quality of the active subject of the offense (a circumstantial element essential for the existence of the offense) led to the regulations of an additional variant, which reflects, through specific penalty limits, a different degree of social danger.

The provisions in Article 193 of the Penal Code, which criminalizes assault or other acts of violence, establish the objective and subjective conditions necessary for an act to constitute an offense, thus representing the incrimination norm for the standard form of the act. In contrast, art. 199 alin. (1) of the Penal Code refers to the aggravated form of the offense provided in art. 188, 189, and 193-195 of the same code, as well as to the increase by one-fourth of the special maximum penalty prescribed for these offenses when the acts are committed against a family member.

The reference in Article 199 of the Penal Code to the provisions and statutory penalty in Article 193 of the Penal Code constitutes a legislative technique that, according to the Article 16 alin (1) of Law no. 24/2000 on the rules of legislative drafting for normative acts, can serve to supplement, extend, or exclude certain regulations. When this reference serves a supplementary role, the norm to which the reference is made complements the content of the referring norm, avoiding the repetition of existing regulations. Through this legislative

⁶Ștefan Daneș, Vasile Papadopol, "Individualizarea judiciară a pedepselor", Editura Științifică și Enciclopedică, București, 1985, p. 111.

⁷ Ștefan Daneș, Vasile Papadopol, op. cit, p. 112.

technique, a normative connection is created between the two provisions, with one serving as the legal basis for the other.

The consequences of this normative relationship are established by Article 5 alin. (1) and alin. (2) of the Law no. 187/2012 for the implementation of Law no. 286/2009 on the Penal Code, according to which the penalty limits are adopted and retained by the incomplete norm (Art. 199 of the Penal Code), even in the event of the repeal of the supplementary norm (Art. 193 alin. (2) of the Penal Code), unless otherwise provided by law. Thus, regarding the provisions in Article 199 of the Penal Code, the reference made to Article 193 of the Penal Code serves to clarify the legal framework applicable in cases where the act is committed against a family member. The basis of the incrimination norm provided by Article 193, extends to cover the qualifications of the subjects of the crime (i.e., family members). As a result of this modification, the legislator has adjusted the upper penalty limits to reflect the degree of social danger of the act, namely by increasing the maximum by one-fourth.

By introducing a special, higher maximum penalty for the offenses provided by Articles 188, 189, and 193-195 of the Penal Code (increased by one-fourth) in cases where the acts have been committed against a family member, the legislator aimed to ensure the protection of family relationships and to discourage domestic violence, without creating a new offense type.

Consequently, the offense of assault or other acts of violence, as provided in Article 193 of the Penal Code, constitutes the prototypical offense, while the provisions of Article 199 of the Penal Code establish an aggravated form of this offense when the act is committed against a family member.

Considering the aforementioned points, for the offense provided in Article 193 alin.(2) of the Penal Code—with the application of Article 199 alin. (1) of the Penal Code—the penalty provided by law, according to Article 187 of the Penal Code, refers to the aggravated form of the offense (i.e., with the maximum penalty increased by one-fourth), namely imprisonment from 6 months to 6 years and 3 months, or a fine. In this context, the general statute of limitations for criminal liability for the offense of assault or other acts of violence within the framework of domestic violence, regulated by Article 193 alin.(2) of the Penal Code with the application of Article 199 alin.(1), is that provided by Article 154 alin.(1) lit.(c) of the Penal Code.

Consequently, for the reasons stated above, the High Court of Cassation and Justice—the panel for resolving legal issues in criminal law—accepted the referral submitted by the Bacău Court of Appeal—Penal Section and for cases involving minors and family matters—in File No. 2.168/321/2021, and ruled that the general statute of limitations for criminal liability for the offense of assault or other acts of violence within the family, as provided by Article 193 alin.(2) of the Penal Code with the application of Article 199 alin.(1) of the Criminal Code, is that provided by Article 154 alin.(1) lit.(c) of the Penal Code, namely eight years.

CONCLUSIONS

We can observe the positive attitude of the Supreme Court judges in defending social values and the life of the individual, which, in light of domestic violence statistics showing an increase in such acts, is achieved by improving the sanctioning regime and clarifying the statute of limitations by setting the offense at an eight-year term. This also reflects a firmer approach by the legislation in the area of domestic violence, aimed at protecting the victim and discouraging abuse within the family.

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