DOMESTIC VIOLENCE - A GROUND FOR MARRIAGE DISSOLUTION

Delia-Mihaela MARINESCU, PhD.
Judge, Associate teaching staff
Petroleum-Gas University of Ploiesti, Romania
delia.marinescu@ymail.com

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Abstract:
Domestic violence is a phenomenon that is gaining momentum in the contemporary period, which determines its increasingly broad regulation, which extends to several branches of law, in relation to the impact that occurs on human rights in general.
The article aims to analyze domestic violence in relation to the reasons that lead to the dissolution of marriage, taking into account that both divorce and the reduction of domestic violence represent basic institutions in family law, through the prism of the complex elements that compose them and the implications that occur both in the relationships between spouses and, in some cases, in relation to their minor children.
At the same time, this scientific research aims to debate the importance of reducing violence in cases of domestic violence in family relationships and to present situations from the practice of courts in which domestic violence has constituted a valid reason for divorce, which was pronounced due to the exclusive fault of the aggressor spouse.
At the end of the scientific approach, it will be concluded that domestic violence can be a valid reason for divorce, violence not only being physical, but can also be verbal, psychological, social or economic, and in situations where the forms of violence are multiple, the effects on the victim are greater.
Keywords: *divorce, domestic violence, good cause, dissolution of marriage*

INTRODUCTION

Domestic violence is a reality of society in recent years, which is becoming increasingly widespread not only nationally, but also European and internationally, which has led to an intensification of legislative concern for the more detailed regulation of this legal institution, by creating strict legislative provisions that limit the phenomenon, taking into account its legal, psychological or economic implications.

The diversification of forms of violence in recent years has determined the need to create a broad framework for the protection of victims, by sanctioning all forms of domestic violence that may occur and which are regulated at the legislative level in art. 4 of law no. 217/2003 on the prevention and combating of domestic violence, these being considered not only violations of human rights, but also forms of discrimination that can affect vulnerable groups in society [1].

National legislation on domestic violence takes over the principles set out in the Istanbul Convention, the most comprehensive legal document adopted at international level to prevent and combat violence against women and gender-based violence, which provides obligations for the signatory member states of the Council of Europe to ensure effective legislative policies, capable of ensuring adequate protection for victims, with complex mechanisms and policies being established, aimed at reducing cases of domestic violence, which is stated in the preamble of the Convention to affect women to a greater extent than men.

Domestic violence involves, according to the provisions of the framework law no. 217/2003, the exercise of a form of violence in the forms described by the law that occurs in the family environment, and the persons involved in the aggression have the status of family members, among these, the most common acts of violence occurring between spouses, which can produce multiple legal consequences, respectively, on the criminal level, the crime of domestic violence can be retained, provided for by art. 199 of the Criminal Code, which has as a specific element the special relationship that must exist between the victim and the aggressor [2], and on the civil level, a protection order can be issued, through which the aggressor can be prohibited from approaching the victim, from his home, from his workplace, from contacting her or even the eviction of the aggressor from the parties' home can be ordered, even if he is the sole owner.

In the long term, the most appropriate measure to reduce cases of domestic violence is to remove the victim from the perpetrator, which can be achieved by dissolving the marriage, the victim having the possibility to file a claim with the court based on the provisions of art. 373, letter b) of the Civil Code, namely on the existence of solid reasons that determine that the relationship between the spouses is seriously damaged and make it impossible to continue the marriage. Thus, the partner who is a victim of domestic violence can request the court to dissolve the marriage due to the exclusive fault of the aggressor spouse, being obliged to prove that due to the defendant's acts of aggression, the family relationship has broken down and that it is no longer possible to continue the family relationship due to the aggressor's behavior, which is incompatible with the relationship of respect that he owes to his wife.

We note that the environment from which the victim of domestic violence comes and the repetition of various forms of abuse over long periods of time can cause the victim to feel resigned and accept violence as normal in family life, especially in the case of emotional, psychological, social or economic forms, an aspect that can create long-term effects, including on the children of the parties, who, witnessing scenes of violence in the family environment, can apply it to the families they form when they become adults, which leads to the perpetuation of violence.

GOOD REASONS FOR DIVORCE

One of the cases in which the legislator has provided that a marriage can be dissolved by court is determined by the existence of solid reasons that determine that the parties' relations are seriously damaged and that the marriage can no longer continue, it being noted that in this situation the divorce procedure can only be carried out through the court, given that it inevitably involves the administration of evidence.

Thus, although current legal regulations have established the possibility for divorce to be carried out administratively, in the situation where the spouses do not have children or do not have minor children, or by notarial means, when, regardless of whether the spouses have minor children or not, they agree on the dissolution of the marriage, but also on the ancillary aspects that concern parental authority over the minors, their residence, as well as the names of the spouses after the divorce, however, these two methods imply the impossibility of administering evidence to determine the reason that led to the breakdown of relations between the spouses.

Therefore, in the case of administrative or notarial divorce, the spouses agree on all aspects that must be regulated for the dissolution of the marriage, and in the event that one of the spouses does not want the marriage relationship to fall apart, or seeks to establish fault, respectively to discuss and prove the reasons that led to the divorce, it is mandatory that the divorce be carried out through the courts.

We note that the legislator did not mention grounds for divorce that would fall under the situation of holding exclusive fault in the dissolution of the marriage, but the doctrine has retained as the main reasons in this regard the infidelity of one of the partners, serious violence exercised in the marital relationship or the abandonment of the marital home by

one of the spouses [3], being mandatory for holding exclusive fault in the dissolution of the marriage that the circumstances presented by the spouses be substantial, which seriously affect the marital relationship, not just simple misunderstandings.

We would like to point out that the basis for committing domestic violence is most often the excessive consumption of alcohol by the aggressor, which causes him to behave impulsively, to accentuate his nervousness or to encourage him to behave; other reasons that can be the cause of domestic violence are jealousy, suspicions that hover over the partner's fidelity, which can cause violent and uncontrolled reactions on the part of the aggressor, which culminate in violence against the victim, as well as the precarious living conditions that are found mainly in rural areas.

It is important to point out that divorce based on the fault of one of the spouses can be requested by the plaintiff, through the divorce petition that he submits to the court, or it can be requested by the defendant by way of a counterclaim; in this situation, although the plaintiff requests the dissolution of the marriage based on a reason other than that of exclusive fault, the defendant, despite the fact that he wants the separation to occur, does not agree with the legal basis indicated by the plaintiff and considers that only the plaintiff is to blame for the dissolution of the marriage, so he himself intends to invest the court with a request in the file filed by his partner.

In the case of divorce based on the exclusive fault of one of the spouses, the main role falls to the judge charged with resolving the case to determine which evidence proposed by the parties is the factual situation that establishes the reasons that led to the dissolution of the marriage, any means of evidence being admissible [4] for finding the truth, the most commonly used evidence being documents, interrogation of the parties, evidence with witnesses, who may also be relatives, with the exception of descendants, taking into account that in family relationships the private aspects of the parties' relationship are known much more thoroughly by those close to them, especially in situations where forms of violence are exercised against one of the spouses, the latter being reluctant to reveal these aspects to people who are not close to them and in whom they do not fully trust.

However, with regard to the evidence of witnesses, the court must verify the objectivity of the information provided by them, especially when they are close relatives,

given that in the judicial procedure, the judge is obliged to establish an objective factual situation in order to determine the true reasons that led to the dissolution of the marriage, in order to conclude whether the relationship broke up only because of one of the spouses or both partners had a common fault, a situation in which the divorce application due to the exclusive fault of one of the spouses cannot be admitted. This aspect may be relevant to the victim's possibility to claim and request compensation, as well as compensatory benefits, claims with which the court can be invested only as accessories to the divorce based on exclusive fault, not as distinct claims.

Also in the case of psychological violence, we admit that psychological expertise could be administered to determine whether the victim was subjected to forms of abuse during the marriage relationship, what these were, as well as to identify the profile of each spouse, establishing the inter-family relationship during the marriage being essential for drafting the conclusions of the expertise report.

Violence produced in the family environment is much more difficult to prove due to the fact that the aggressions are produced in an intimate space, where the victim is often alone, cannot defend herself and ends up unable to prove her claims regarding the acts of aggression to which she is subjected before the court, her vulnerability in that environment being a way of imposing control by the aggressor.

The easiest form of domestic violence to prove is physical, in which the marks on the victim's body are proof of the existence of violence against her, which can be proven with a forensic medical certificate issued at the victim's request, as well as with photographs or video recordings, and can be difficult to combat by the aggressor husband; however, there are situations in which the victim does not perceive from the first acts of aggression that she is being subjected to physical violence, and may come to believe that a slap applied by the partner, who later shows signs of regret, does not constitute a form of violence, which prevents her from taking firm measures from the beginning and persists in this situation, hoping that it was an isolated episode in the couple's relationship and that over time, the relationship between the spouses will be harmonious.

As for the other forms of violence regulated by the provisions of art. 4 of Law no. 217/2003, they can sometimes be difficult to prove, as their existence may be in doubt,

which may lead to the impossibility of being held by the judge, as long as they are not proven, given that the provisions of art. 249 of the Civil Procedure Code establish the obligation of the person making a statement in a civil trial to prove it, so that the parties must prove the statements made [5]; thus, in the judicial divorce procedure, the spouse who requests the finding of the other partner's exclusive fault based on domestic violence must prove before the court the acts of aggression, the fact that they have seriously damaged the relationship and that he can no longer continue the marriage due to the abuses of the defendant spouse, the court hearing the case not being able to pronounce the court decision solely on the basis of the victim's claims, as long as he does not prove them.

Given that domestic violence is not found, as a rule, in a single form, but the forms of violence often intertwine, almost inevitably, alongside physical, verbal, social or economic violence, there is also psychological violence that creates a state of constant fear for the victim by imposing control by the partner, causing her to experience states of tension that make it impossible for her to gather evidence to present before the court and to be able to prove the abuse she was subjected to during the marriage and which led to the breakdown of the family relationship.

The most difficult moment from the victim's perspective is the realization that she is being abused, especially considering that there are cases in Romania in which domestic violence is not considered a real danger to the victim, but rather there is a higher degree of tolerance of forms of violence, derived from the idea that men are superior to women and that, in order to preserve the family relationship, she must submit to the will of her partner, taking into account the fact that, most of the time, both she and the children are totally economically dependent on the man, and his removal from the family would create a real financial problem, of ensuring minimal subsistence resources and housing.

However, the change in mentality regarding the acceptance of domestic violence has made significant progress in recent years, being constantly supported by legislative provisions aimed at protecting victims of domestic violence, the most recent of which also covers the situation of divorce, in the sense that Law no. 199/2025 adopted by the Official Gazette of Romania no. 1106/28.05.2025 exempted victims of domestic violence from paying the judicial stamp duty for the divorce application.

Although the amount of the judicial stamp duty for divorce actions requesting the finding of the exclusive fault of the aggressor spouse for the dissolution of the marriage is not high, currently at 200 lei, the adoption of this measure may nevertheless constitute an important means of encouraging the initiation of these legal proceedings, especially for victims from rural areas or other disadvantaged categories. We note that the law does not detail the clear manner of applying this provision, in the sense that it does not mention whether any person claiming to be a victim of domestic violence can benefit from the exemption from paying the judicial stamp duty when filing the divorce application, whether it is necessary for there to be a previous protection order issued against the aggressor or in which situations the legal norm specifically applies.

RELEVANT CASE LAW ON DOMESTIC VIOLENCE AS A VALID REASON FOR THE DISSOLUTION OF MARRIAGE

In recent judicial practice, domestic violence can constitute a valid reason for the dissolution of a marriage, based on the exclusive fault of the aggressor spouse, with the courts arguing, based on the evidence administered in the file, that the marriage relationship broke down due to his behavior, which made it impossible for the spouses to continue their family relations and cohabitation.

Thus, it was held by Civil Sentence No. 4298/2025 of the Ploiești Court that the parties' marriage was dissolved due to the defendant's exclusive fault, holding that the defendant admitted exclusive fault in the dissolution of the marriage, proof being provided that the parties had separated in fact, in the sense that they were no longer living together during the resolution of the divorce action. At the same time, the plaintiff provided documentary evidence in the file that the defendant consumed alcoholic beverages, due to this behavior he was subject to disciplinary investigation, and his employment contract was suspended, this behavior being compounded by the violent attitude manifested towards his wife, two protection orders being issued against him, the first for a duration of 6 months, and the second for a maximum duration of 12 months, due to the acts of physical, verbal and psychological violence committed by the husband towards his partner, he being investigated including from a criminal perspective for violating the protection orders.

The court argued the solution pronounced by the fact that the spouses have a legal duty to live together, and the behavior of the aggressor husband determined the impossibility of continuing the cohabitation of the parties, as long as it was proven that he consistently displayed violent behavior due to alcohol consumption, which determined the impossibility of continuing the marriage, an aspect acknowledged by the defendant and proven by the plaintiff through the proposed evidence.

Thus, analyzing the civil sentence presented, which remained final due to non-appeal, we find that its content contains previously presented theoretical aspects regarding the fact that a cause of domestic violence can be alcohol consumption, domestic violence being proven by the plaintiff with documentary evidence, namely the sentences pronounced in the protection order files, on which there was res judicata authority, but also those regarding the defendant's conduct at work, also determined by alcohol consumption, being relevant in the case also the procedural position of the defendant recognizing all the aspects related and proven by his wife.

Another relevant case is the one in Civil Sentence no. 6535/14.07.2025 of the Buzău Court, final by non-appeal, by which the court held the defendant solely at fault in the dissolution of the marriage, the plaintiff providing evidence regarding the defendant's acts of physical and verbal violence, excessive alcohol consumption, temporary abandonment of the marital home, the existence of an extramarital relationship and the climate of permanent fear and conflict. At the same time, she submitted to the case file evidence from which it emerged that she was forced to request the intervention of the police, as a result of the defendant's violent and threatening behavior, but she expressly waived the request to issue a protection order, although there were manifestations of verbal violence and repeated threats.

These aspects outlined an exclusive fault of the defendant husband in the dissolution of the marriage, also related to the fact that he seriously violated the conjugal obligations provided for in art. 309 para. 1 and 2 of the Civil Code, namely the obligation of mutual respect, moral support and cohabitation, generating a climate of hostility in the family and determining the de facto separation of the spouses.

We consider that this court decision is relevant in highlighting the fact that in order to prove domestic violence, it is not essential to have previous protection orders proving

acts of aggression against the applicant, her attitude of waiving the issuance of a protection order being similar to that adopted by the majority of victims of domestic violence, who give up on going through this procedure, hoping that their partner will correct his attitude and family life will resume its natural course. It is also important to point out that physical and verbal domestic violence can also be doubled by psychological violence, proven in this case by the climate of fear and permanent conflict in the family environment, which left their mark on the marital relationship and seriously and irreparably affected the marriage of the parties.

We consider that the Civil Sentence no. 7167/10.07.2025 pronounced by the Bucharest 5th District Court, by which the marriage was dissolved due to the exclusive fault of the defendant husband, from the factual situation retained by the court, it emerged that the defendant, due to alcohol consumption, became physically and verbally aggressive, subjecting his wife to humiliating situations, which culminated in the fact that she was expelled from her own home, is also relevant in the sense of the above. It was also noted that a provisional protection order was issued against the aggressor husband by the police, then a protection order by the court for a period of 11 months, as a result of the physical and verbal violence exercised against his wife. Following his behavior, the defendant was pre-trially arrested for a period of 30 days for committing domestic violence offenses and violating the provisional protection order, and was subsequently convicted for committing two concurrent offenses of violating the measures ordered by the provisional protection order, to a prison sentence of 8 months, motivated by the fact that the defendant, although there was a provisional protection order against him that required him to keep a distance of 200m from the plaintiff, went to the home, where he caused a scandal, addressed numerous insults to her, the neighbors being forced to call for the support of the police.

The court's ruling was based on the fact that the relationship between the spouses had deteriorated significantly due to the defendant's behavior, causing a state of tension and domestic violence against the plaintiff, consisting of repeated physical and verbal aggression, including by the defendant hitting her in the head with a bottle, and subsequently throwing her out of her own home, an aspect of extreme gravity, which, in the court's opinion, denotes a lack of any respect for the plaintiff's person and a flagrant

disregard for the fundamental obligations incumbent on each spouse under marriage, namely the obligation of mutual respect and moral support.

The court considered that the defendant's actions, taken as a whole, constituted a serious and repeated violation of the obligations arising from marriage, in particular those relating to mutual respect, moral and material support and the duty to contribute to the well-being and balance of family life, the defendant's excessive alcohol consumption and the physical and verbal aggression exercised against the plaintiff demonstrating the defendant's sole fault in the breakdown of the marital relationship. From the evidence administered in the case, the court did not identify any fault on the part of the plaintiff in the dissolution of the marriage, as long as she fulfilled her duties as a wife, proving understanding, moral and material support, ensuring the family's resources even when the defendant lost his jobs due to problems with alcohol consumption.

The solution pronounced by the court is relevant not only from the perspective of the retention of violence, as a valid reason for the dissolution of the marriage, but also to outline the fact that abuses against the partner are not only taken into account in the judicial divorce procedure, but also in the situation of issuing a protection order, but also from a criminal perspective, the defendant in the case being subject to the preventive measure of preventive arrest following the violation of the protection order issued in favor of the plaintiff, and subsequently convicted for acts of violence committed against his wife.

By Civil Sentence no. 1434/02.04.2024 of the Giurgiu Court, the court admitted the plaintiff's request and held the defendant guilty in the dissolution of the marriage, considering that from the evidence administered in the case, it was held that the defendant husband became aggressive towards the plaintiff, which over time also determined the erosion of family relations, his behavior deriving from the jealousy he manifested towards his partner, holding that the plaintiff did not prove that she was at fault in the dissolution of the marriage, considering that she fulfilled her conjugal duties in a mature and responsible manner. We consider that the solution pronounced in this case is relevant from the perspective of the fact that the root of domestic violence can also be the jealousy manifested by the aggressor husband, even if the evidence did not reveal any conduct of the victim contrary to the moral norms on which a marriage relationship is based.

Another relevant case identified in the practice of the courts is the one pronounced in Civil Sentence No. 2796/13.03.2024 by the Ploiești Court, which partially admitted the counterclaim filed by the victim wife, ordered the dissolution of the marriage due to the fault of the plaintiff husband, and, as a protective measure for the benefit of the victim, ordered the establishment in her favor of the right to compensatory benefit in the form of life usufruct over a share owned by the aggressor husband in an apartment.

In its reasoning, the court noted that the witnesses heard reported that the husband had been physically and verbally aggressive towards his wife on several occasions during their marriage to his wife, an aspect that was corroborated by a forensic medical certificate submitted by her. As regards the right to compensatory benefit in the form of life usufruct over the part belonging to the plaintiff-defendant of the property belonging to the plaintiff, the court noted that art. 392 paragraph 1 of the Civil Code does not limit the possibility of establishing usufruct only over assets owned exclusively by the debtor, so that it can also be established over a part of an asset owned by the debtor in co-ownership with other persons, the property in question being the common home of the spouses, being the property in which the defendant-plaintiff has constantly resided and which she occupies, she did not have another property to live in, the court holding that there was a significant patrimonial imbalance in relation to the living conditions during the marriage, which could be caused to the defendant-plaintiff for divorce, in the sense of jeopardizing her housing situation, in the sense that she could be forced to move from the home where she had lived for more than 20 years.

We consider that the solution pronounced by the court is relevant from the perspective of the fact that holding the aggressor husband at fault in the dissolution of the marriage may determine not only an exclusive fault in the breakdown of family relations, but may also determine additional protection for the victim of domestic violence, by granting her a compensatory benefit, in this case by establishing the possibility that she may benefit from a life usufruct right over the share that belonged to the husband, in relation to the fact that she did not own another property where she could live, outside of the home that was shared during the marriage. In addition, the case presented is also relevant from the perspective of the fact that the proof of the acts of violence was provided by the victim by administering evidence with witnesses.

In conclusion, from the practical cases presented in the recent jurisprudence of the courts, it follows that domestic violence can constitute a valid reason for divorce, which determines the retention of exclusive blame for the breakdown of family relations to the detriment of the aggressor spouse, but it is indispensable for the victim to provide evidence before the courts regarding the aspects supported by the divorce petition.

CONCLUSIONS

Domestic violence is a phenomenon that is increasingly widespread in society and to reduce it, legislative measures are constantly being adopted to protect victims from contacting the judicial authorities, to stop acts of aggression and to facilitate judicial procedures in order to facilitate access to them.

Even though in civil law, the protection order measure is a frequently used measure in recent times to try to remove the aggressor from the victim for a certain period of time, however, as long as, in the case of spouses, they remain married, after the effects of the protection order, which can be issued for a maximum period of 1 year, they can resume living together, which implies that there is a possibility that the acts of aggression will continue as long as the aggressor's behavior has not changed.

In the event that the victim of domestic violence wishes to dissolve her marriage with the aggressor, and the main reason is the domestic violence exercised during the marriage, she has the possibility of initiating a legal proceeding by which to request the divorce due to the exclusive fault of the aggressor, in which case she will have to provide proof of the acts of aggression committed against her.

We believe that through the scientific research carried out in the article we have succeeded in proving that domestic violence can constitute a valid reason for divorce, this aspect arising both from the theoretical aspects presented and from the jurisprudence presented through which we have shown that in the practice of the courts of law the forms of aggression produced in the marital relationship can determine its dissolution based on the exclusive fault of the aggressor.

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