

CYBER VIOLENCE- IMPACT OF THE BUTURGĂ CASE VERSUS ROMANIA ON NATIONAL LAW

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Abstract: *The European Court of Human Rights pointed out that cyber violence was currently recognised as an aspect of violence against women and girls, and that it could take on a variety of forms, including cyber breaches of privacy, intrusion into the victim's computer and the capture, sharing and manipulation of data and images, including private data. In Romania, the cyber violence term was defined following the adoption of Law no 106/2020 amending the Law no.217/2003 on preventing and combating domestic violence, and represent the first step in its regulation.*

Key words: *cyberviolence, domestic violence, national law, case law, protection order.*

1. Introduction

The acts of cyberviolence, cyberharassment and malicious impersonation have been categorised as forms of violence against women and children capable of undermining their physical and psychological integrity in view of their vulnerability (*K.U. v. Finland*, no. 2872/02, § 41).

In the case of *Buturugă versus Romania*, *Buturugă* complains before the European Court of Human Rights that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life and for correspondence) of the European Convention on Human Rights. She also criticises the authorities' refusal to examine her complaint concerning the violation of her correspondence by her ex-husband.

In fact, in December 2013, Ms *Buturugă* lodged a complaint against her husband, alleging that she had been the victim of domestic violence. She alleged that he had threatened to kill her, and presented a medical certificate describing her injuries. The following month Ms *Buturugă* lodged a second complaint to the effect that she had received fresh threats and suffered further violence at her husband's hands aimed at inducing her to withdraw her first complaint. At the end of January 2014 the couple divorced. In March 2014 Ms *Buturugă* requested an electronic search of the family computer, alleging that her former husband had wrongfully consulted her electronic

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accounts – including her Facebook account – and had copied her private conversations, documents and photographs. Then in September 2014 Ms Buturugă lodged a third complaint of breach of the confidentiality of her correspondence. In February 2015 the prosecutor's office discontinued the case on the grounds that although Ms Buturugă's former husband had threatened to kill her, his behaviour had not been sufficiently serious to be designated as a criminal offence. It also decided to dismiss, as out of time, Ms Buturugă's complaint concerning the violation of the confidentiality of her correspondence. Finally, it imposed an administrative fine of some 250 euros (EUR) on the applicant's former husband. Ms Buturugă unsuccessfully appealed to the prosecutor's office against the order issued by the prosecutor, before appealing to the court of first instance. Furthermore, on 13 March 2014 the court of first instance issued Ms Buturugă with a protection order valid for months. She alleged that the police delayed the implementation of this order and that her former husband never complied with it. The Government pointed out that Ms Buturugă failed to apply for the renewal of the order after the first six months had elapsed. Moreover, Ms Buturugă alleged that her former husband had stalked her in the street on 29 October 2015. The Government pointed out in its observations of July 2017 that criminal proceedings for harassment were pending.

On that occasion, the Court pointed out that „cyber violence was currently recognised as an aspect of violence against women and girls, and that it could take on a variety of forms, including cyber breaches of privacy, intrusion into the victim's computer and the capture, sharing and manipulation of data and images, including private data” (see *Buturugă v. Romania*, no.56867/15, § 74).

Online violence, or cyber violence, is closely linked with offline, or “real-life”, violence and falls to be considered as another facet of the complex phenomenon of domestic violence (see *Buturugă*, cited above, §§ 74 and 78, and paragraph 20 above).

The States have a positive obligation to establish and apply effectively a system of punishing all forms of domestic violence and to provide sufficient safeguards for the victims (see *Opuz v. Turkey*, no. 33401/02, § 145, and *Bălşan v. Romania*, no. 49645/09, § 57, 23 May 2017).

The positive obligation applies to all forms of domestic violence, whether occurring offline or online. The Court has found that this positive obligation includes in particular: (a) the obligation to establish and apply in practice an adequate legal framework affording protection against violence by private individuals; (b) the obligation to take the reasonable measures in order to avert a real and immediate risk.

2. National Law

The cyberviolence term was defined following the adoption of Law no 106/2020 amending the Law no.217/2003 on preventing and combating domestic violence, by introducing letter h in article 3.

Thus the legal definition of cyber violence includes: online harassment, online messages inciting gender-based hatred, online stalking, online threats, non-consensual

publication of intimate information and graphic content, unlawful access to intercept private communications and data.

The above facts do not represent an exhaustive list, given that the normative act includes in the sphere of cyber violence „any other form of misuse of information and communication technology through computers, smart mobile phones or other similar devices that use telecommunications or can connect to the internet and transmit and use social or email platforms, with the purpose of shaming, humiliating, frightening, threatening, silencing the victim”.

In the context of these legislative changes, domestic violence has been redefined as any intentional physical, sexual, psychological, economic, social, spiritual or cyber violence or inaction that occurs in a family or domestic setting or between spouses or ex-spouses and current or former partners, regardless of whether the perpetrator lives or has lived with the victim.

The criminal code currently covers offences such as threats (article 206), blackmail (article 207) and harassment (article 208), but does not criminalize online harassment, online threats.

Also art. 226 of the criminal code regarding the violation of private life provides: „Unlawful invasion of privacy, without right, by photographing, capturing or recording images, listening with technical means or audio recording of a person in a dwelling or room or dependency belonging to it or of a private conversation is punishable by imprisonment from one month to 6 months or a fine. The disclosure, broadcast, presentation or transmission, without right, of the sounds, conversations or images provided for in paragraph. (1), to another person or to the public, shall be punished with imprisonment from 3 months to 2 years or with a fine”. As can be seen, paragraph 2 of the mentioned article talks about the non-consensual publication of information obtained without right, but does not expressly provide for the act of disclosure, dissemination, presentation or transmission, without right, in the online environment.

As can be seen, the current legislation considers cyber violence as a form of domestic violence, and the subjects of this form of violence are according to article 3 of the updated Law no 217/2003: spouses or former spouses, current partners or former partners, regardless of whether the perpetrator lives or has lived with the victim.

The question arises as to the sanction to be applied if a person commits acts of cyber violence against another person, since the current criminal code does not provide it as a crime, but we only find it regulated in the updated Law no. 217/2003, as a form of domestic violence. The text of the law mentioned above provides that against the persons referred to in Article 3 may be issued a temporary protection order for a period of 5 days and a protection order issued by a judge not exceeding 12 months from the date of issuance.

We appreciate that the current regulation does not cover all the situations in which cyber-violence may occur through the use of digital technologies. These include: copying a person's identity and sending malicious messages on their behalf to someone else, sending upsetting or threatening messages via message-sharing platforms, spreading lies or posting embarrassing photos of someone on social networks. It is also necessary to broaden the scope of persons who can commit such acts, i.e. not only persons with

whom the victim has or has had a marriage or cohabitation relationship should be considered.

We can equate cyber stalking, cyber harassment, cyber bullying and cyber violence, or we can say that cyber violence includes cyber stalking, cyber harassment, cyber bullying.

Cyber harassment is a persistent and repeated course of conduct targeted at a specific person, designed to cause severe emotional distress and often a fear of physical harm (Council of Europe Cybercrime Convention Committee, 2018).

In cyber bullying, the focus is placed almost exclusively on the experiences of children, adolescents and young adults, characterised by legal and emotional vulnerability. But cyber bullying can involve requests to the victim for sexual favours or any unwelcome content that is regarded as offensive, humiliating, degrading or intimidating, can incorporate threats of physical and/ or sexual violence and hate speech or inappropriate, offensive advances on social media platforms or in chat rooms.

Cyber stalking is a form of stalking perpetrated using electronic or digital means.

In our national legislation, cyber violence includes online harassment, online stalking, non-consensual publication of information and intimate graphic content, but not with reference to children, teenagers and young people using social networks, messaging apps and discussion sites. We consider that in this direction the legislator should intervene in order to avoid future convictions at ECHR.

Recently, Russia was sentenced by ECHR in the case of Volodina versus Russia. The case concerns the state's obligation to protect the applicant from acts of cyber-violence, consisting of publishing her intimate photographs without her consent, harassing her through stalking, creating false profiles, and effectively investigating these acts.

In recent years, Romania has consistently worked to ratify and prepare for the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), a document unanimously recognised as the most complex instrument of international legal cooperation in preventing and combating domestic violence, protecting victims, prosecuting perpetrators and adopting a wide range of measures to curb this scourge.– The effects of this Convention are established by the article 73 which states: „the provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating violence against women and domestic violence”.

3. Conclusions

Cyber violence is perpetrated across different cyberspaces, including social media platforms, messaging apps and discussion sites all over the world.

The Council of Europe's Working Group on cyberbullying and other forms of online violence, especially against women and children, proposed the following definition in a report prepared in 2018 (*Mapping study on cyber violence*): “Cyberviolence is the use of computer systems to cause, facilitate, or threaten violence against individuals that results in, or is likely to result in, physical, sexual, psychological or economic harm or

suffering and may include the exploitation of the individual's circumstances, characteristics or vulnerabilities."

This study specifies that certain forms of cybercrime, such as illegal access to intimate personal data or the destruction of data may also be considered acts of cyberviolence. It also includes a list of actions falling within the definition of cyberviolence against women: ICT-related violations of privacy, ICT-related hate crimes, cyberstalking, direct online threats of physical violence, cybercrime and sexual exploitation, and online sexual abuse of children. ICT-related violations of privacy include computer intrusions and the taking, sharing, manipulation of data or images, including intimate data. Cyberstalking is stalking in an electronic format. It encompasses a pattern of repeated, intrusive behaviours – such as following, harassing, and threatening, which causes fear in victims. The study also refers to research showing that cyberstalking by intimate partners often occurs in the context of domestic violence and is a form of coercive control.

In April 2020, the European Commission's Advisory Committee on Equal Opportunities for Women and Men acknowledged that there was 'no commonly accepted definition of online violence against women' (European Commission, Advisory Committee on Equal Opportunities for Women and Men, 2020). Although defining CVAWG is acknowledged as a challenging endeavour, over the past decade there has been a growing discussion on how to conceptualise the phenomenon, and several attempts to define it in a policy context have been made.

However, the European Commission's Advisory Committee on Equal Opportunities for Women and Men recommends the use of the following definition: „Cyber-violence against women is an act of gender-based violence perpetrated directly or indirectly through information and communication technologies that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women and girls, including threats of such acts, whether occurring in public or private life, or hindrances to the use of their fundamental rights and freedoms. Cyber-violence against women is not limited to but includes violations of privacy, stalking, harassment, gender-based hate speech, personal content sharing without consent, image-based sexual abuse, hacking, identity theft, and direct violence. Cyber-violence is part of the continuum of violence against women: it does not exist in a vacuum; rather, it both stems from and sustains multiple forms of offline violence". (European Commission, Advisory Committee on Equal Opportunities for Women and Men, 2020)

As far as the Romanian legislator is concerned, it can be observed that it has also taken the first steps to define the notion of cyber violence and to sanction it, even if the current regulation, from our point of view, is not complete and does not refer to all the categories of persons who can be victims of it.

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