

IT DOESN'T ONLY HURT THE BODY

Legal protection against non-physical domestic violence in Hungary

RENÁTA GARAI

researcher (National Institute of Criminology)

MÁTÉ JENŐ KISS

PhD student (Eötvös Loránd University)

Abstract

Psychological abuse is usually the first manifestation of violence to appear and it is often at least as difficult for victims to endure and process as physical abuse. In this article, the authors attempt to present the means by which Hungarian law, primarily criminal law, takes up the fight against non-physical abuse as a part of domestic violence and the possible directions of legal development in this respect. In this field, they analyze the independent criminal offense of domestic violence and the related social attitudes and introduce the legal instrument of the restraining order. Finally, the authors formulate proposals in order to increase the effectiveness of the state's fight against domestic violence.

Keywords: domestic abuse, non-physical abuse, domestic violence, restraining order

AMIKOR NEM CSAK A TEST SÉRÜL

A családon belüli érzelmi bántalmazás elleni jogvédelmi eszközök Magyarországon

Absztrakt

Az érzelmi bántalmazás a családon belüli erőszak általában elsőként jelentkező megnyilvánulása, mely gyakran nehezebben elviselhető az áldozatok számára, mint a fizikai bántalmazás. A szerzők bemutatják, a magyar jog, elsősorban a büntetőjog milyen eszközökkel veszi fel a harcot a családban jelentkező lelki terrorttal szemben és melyek a jogfejlődés lehetséges irányai. Ebben a körben elemzik a kapcsolati erőszak önálló büntetőjogi tényállását és az azzal

kapcsolatos jogalkalmazói és társadalmi attitűdöket, bemutatják a távoltartás intézményét és javaslatokat fogalmaznak meg a családon belüli erőszakkal szemben folytatott állami küzdelem hatékonyságának fokozása érdekében.

Kulcsszavak: családon belüli erőszak, érzelmi bántalmazás, kapcsolati erőszak, távoltartás

1. Introduction: non-physical abuse

Scholars say, the evolution of domestic violence or abuse in the family can be described as a gradual process the beginning of which is often imperceptible. Psychological abuse is usually the first manifestation of violence to appear. The beginning of emotional abuse is the isolation of the victim from family, friends and other people that would otherwise be available for help in need. Isolation is an indispensable means of exercising control which is the ultimate goal of the abuser.¹ The first slap usually only takes place when the victim has already been isolated from his family and friends to a certain extent.

Qualitative research has shown, psychological abuse is at least as difficult for victims to endure² and process as physical abuse.³ Constant embarrassment, insult, mocking and criticism of the victim are all manifestations of mental and verbal abuse, as well as excessive jealousy. It is important to see that the abuser intentionally creates negative feelings in the victim with his words and behaviors, we cannot speak of unintentionally hurting the other person.⁴ Psychological abuse includes ruining the victim's social relations, making the victim's work impossible, constant manipulation, openly having an affair during the existence of the relationship, or harassment after its termination. It is important to mention the serious threats and the fear-inducing constant uncertainty, which is equivalent to torture.⁵ Since, based on the above, psychological abuse begins with isolation, the victims – who otherwise could stand up for themselves and leave the relationship – are so vulnerable after the breakdown of their social relationships that they can often only turn to their abusers in the feeling of helplessness.

1 MORVAI, Krisztina: *Terror a családban*. Budapest, Kossuth Kiadó, 2003, 33–34.

2 MORVAI op. cit. 33.

3 BERRY, Dawn Bradley: *The Domestic Violence Sourcebook: Everything You Need to Know*. Los Angeles (USA), Loell House, 1998, 2.

4 HARMAT, László: Társam a tárgyam – Érzelmi bántalmazás a párkapcsolatban. *HVG Pszichológia*, 2022/3, 36–38.

5 MORVAI op. cit. 33–34.

In this article, the authors attempt to present the means by which Hungarian law, primarily criminal law, takes up the fight against non-physical abuse as a part of domestic violence and the possible directions of legal development in this respect.

2. Domestic violence as an independent criminal offense of the Criminal Code

Domestic violence and, as part of it, non-physical abuse have been in the center of attention recently. This was no different in Hungary. Since the new Criminal Code has entered into force a decade ago, on 1 July 2013, there has been an independent criminal offense called „domestic violence”. Previously, acts falling within the conceptual scope of domestic violence were classified as other criminal offenses such as battery⁶ or abuse of a minor.⁷ Since summer 2013, Section 212/A of the Criminal Code provides as follows:

“(1) Any person who, on a regular basis:

a) seriously violates human dignity or is engaged in any degrading and violent conduct,

b) misappropriates or conceals any assets from conjugal or common property, and thus causing serious deprivation,

against the parent of their child, or against a family member, former spouse or domestic partner living in the same household or dwelling at the time of commission or previously, against their guardian or person under guardianship is guilty of a misdemeanor punishable by imprisonment not exceeding two years, insofar as the act did not result in a more serious criminal offense.

(2) Any person who commits:

a) battery under Subsection (2) of Section 164 or slander under Subsection (2) of Section 227 against a person defined in Subsection (1) is guilty of a felony punishable by imprisonment not exceeding three years;

b) battery under Subsections (3) and (4) of Section 164, or violation of personal freedom or duress under Subsection (1) of Section 194 against a person defined in Subsection (1) is guilty of a felony punishable by imprisonment between one to five years.

(3) Banishment may also be imposed against persons found guilty of domestic violence.

(4) The perpetrator of the criminal offense defined in Subsection (1) shall only be prosecuted upon private motion.”

6 Section 164. of the Act C of 2012 on the Criminal Code.

7 Section 208. of the Act C of 2012 on the Criminal Code.

2.1. *Non-physical abuse in the spotlight of criminal law*

As we can see, the independent offense doesn't only sanction physical abuse, in fact psychological abuse is in the spotlight, too. Behaviors that do not reach the level of physical abuse qualify according to paragraph (1). The victim of the offense can be:

- the parent of their child
- a consanguineous relative (parent, grandparent, great-grandparent/child, grandchild, great-grandchild)
- the spouse or partner of a consanguineous relative (daughter-in-law, son-in-law, etc.)
- the adoptive parent and foster parent (including the stepparent living together),
- the adopted and foster children (including stepchildren living together)
- the sibling
- the sibling's spouse or partner (brother-in-law, sister-in-law)
- the spouse, partner, registered partner
- the ex-spouse, ex-partner
- a direct relative of the spouse or partner (mother-in-law, father-in-law, spouse/partner's child, grandchild, etc.)
- sibling of your spouse or partner (brother-in-law, sister-in-law)
- the guardian, custodian, guardian, guardian, provided that the perpetrator and the victim are or have been living in the same household or dwelling at the time of commission or previously. The requirement of cohabitation doesn't apply to the parent of the perpetrator's child.

As a matter of principle, it should be established that non-physical abusive actions covered by paragraph (1) of Section 212/A can only be prosecuted upon the initiation of the victim and insofar as the act did not result in a more serious criminal offense. In case of any physical action, however, the offense is classified according to paragraph (2), the proceedings have to be conducted *ex officio*.

Point a) of paragraph (1) aims to sanction psychological abuse and verbal attacks. These humiliating behaviors and actions do not reach the level of bodily harm, but seriously violate human dignity (the most important fundamental right). Point b) of paragraph (1) is sanctioning financial abuse in the course of domestic violence. It is therefore out of question that physical abuse cannot be covered by paragraph (1).

The offense described in point a) is completed by the non-physical abusive action mentioned above, however, point b) already evaluates the result of the offense: for completion here, it is also necessary that the victim suffers destitution as a result of the offender's action. In the lack of a result, the perpetrator can only be held accountable for an attempt.⁸ Speaking of point b), since there is a result, according to the logics of Hungarian criminal law, there also has to be causality, i.e. a cause-and-effect relationship between the action and its result. We can speak of destitution if, as a result of taking away their assets, the victim suffers from a lack of goods necessary to satisfy the basic needs of life (e.g. food, clothing, personal hygiene, accommodation). If, for any reason, the required result does not occur, an attempt of the offense must be established.⁹ The object of the offense of point b) is the material assets belonging to the joint management or joint property of the offender and the victim, including personal belongings and real estate, as well as rights and obligations with a value; the action set out in point b) is taking away these assets.

In relation to paragraph (1), violent behavior cannot be abuse that causes bodily harm (or attempts to do so), and it also cannot be an act to defame someone by physical assault, because in any case the action reaches the level of physical abuse, it is already classified according to paragraph (2). Thus, the violent behavior contained in paragraph (1) is practically limited to using force against objects, and in this case it will only be assessed according to paragraph (1) if it is of a seriously offensive and humiliating nature (we can think of smashing a plate or glass on the ground, overturning chairs).¹⁰ There is no attempt of the offence set out in paragraph (1), because violent behavior includes the attempt to use force against objects or the threat of it, and that already makes the offense completed.¹¹

Child, grandchild, sibling, parent, grandparent... Apparently, there are several potential victims who, as relatives, are all loved ones of each other.

8 LAJTÁR, István: *A gyermekek érdekét sértő és a család elleni bűncselekmények*. In: POLT Péter (ed.): *Új Btk. Kommentár* (IV. kötet: Különös rész). Budapest, Nemzeti Közsolgálati és Tankönyv Kiadó, 2013, 80.

9 Complex Jogtár/Adatbázisok/KJK-Kommentárok, modulok/Büntetőjog/. Kommentár a Büntető Törvénykönyv (2012)/Btk. 212/A §-ához.

10 This would qualify as slander (Section 227 of the Criminal Code), but it is „consumed” by domestic violence (Section 212/A) which means these actions are assessed as part of domestic violence. KARSAI, Krisztina (ed.): *Kommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez*. Budapest, Complex Kiadó, 2013, 445.

11 KARSAI op. cit. 445.

In theory. It is not allowed to abuse others mentally or physically, but even more so not our family members. Behavior that seriously violates human dignity, that is humiliating and violent, or taking away of material assets belonging to the scope of joint management, does not hurt the body, but it is often more unbearable than hitting someone. Since 1 July 2013, criminal law provides a new form of protection against such actions committed among family members and people who are in the relations listed above. The new form of protection is the offense of domestic violence as set out in Section 212/A of the Criminal Code.

2.2. Social and official attitudes concerning the decade-old offense

The independent criminal offense of domestic violence set out in Section 212/A of the Criminal Code is still relatively new, we are at the beginning of the road in terms of public awareness, but it seems that there is still room for improvement in the field of the awareness of the authorities, too. We can be sure that if the existence of this independent criminal offense were to spread more widely, it would increase the willingness to report it, and thus, by definition, it would also reduce latency, or at least contribute to it to a large extent. Most citizens – including the victims and the perpetrators – do not even know that such an offense exists (or if they do know, they only have superficial information about it), and that the frameworks of prosecution have recently fundamentally changed in this area. In many cases, the authorities continue to try to distance themselves from family quarrels, and the dissuading of the victims from reporting is still present to some extent: it is often said by officers that domestic violence cannot be proven anyway, or that it is unnecessary because there is a possibility of reconciliation.

3. Further possibilities of protection against (non-physical) domestic violence

As mentioned above, many people can be the victims of the offense of domestic violence set out in Section 212/A of the Criminal Code, it is thus a misconception that only the abuse of the spouse/partner is sanctioned). It is, however, important to see the *ultima ratio* nature of criminal law. It means that, besides criminal law, law has to fight domestic violence on multiple fields at the same time and we cannot lose our faith in the fact that domestic violence can be prevented, and the sanctioning of psychological or physical abuse that has already occurred cannot be neglected.

3.1. Preliminary restraining order

Family disputes usually do not start with criminal proceedings, that is typically the end result. In order to protect the rights of every person to life, physical integrity and dignity, in accordance with international conventions and the Fundamental Law of Hungary, in 2009, the Parliament created an Act on preliminary restraining orders in order to curb domestic violence.¹² The restraining order set out in the Act is „preliminary” because it is applicable regardless whether criminal proceedings have been initiated upon the violence and thus it often precedes the criminal proceedings in time. According to the Act, domestic violence is defined as an activity or omission of the abuser, which seriously and directly endangers the dignity, the life, the right to sexual self-determination, as well as the physical and mental health of the victim. Thus, psychological abuse, too, qualifies as domestic violence when applying this Act.

Chapter to II of the Act indicates the institutional system for the prevention of domestic violence, it imposes an obligation to report on the authorities, and also regulates the disciplinary responsibility for failure to do so. Health service providers,¹³ personal care providers,¹⁴ public education institutions,¹⁵ the guardianship authority, the police, the prosecutor's office, the court, the probation service officers, organizations that perform victim protection, refugee stations and associations as well as foundations all perform related tasks as part of their basic activities defined by law. Anyone can report if they perceive a danger of violence between relatives, but these institutions and persons are obliged to do so. Employees of the organizations mentioned above who do not comply with their reporting and cooperation obligations face disciplinary actions.¹⁶

It is an undoubted fact that restraining orders can only provide a temporary solution for the victims, and in our opinion, only the cooperation and coordinated work of the authorities can bring a long-term and reassuring result.

12 Act LXXII of 2009 on restraining orders applicable in case of violence among relatives.

13 Especially the midwifery service, general practitioners, and pediatricians.

14 Especially the family support service, child welfare service, temporary home for children or families.

15 Especially educational institutions.

16 There are many criticisms of the effectiveness of restraining orders, most of which are not unfounded: the lack of institutional background necessary for its implementation, the repeated abuses after or even during the period of the orders, the chance for revenge, retaliation, etc. provide a basis for criticism.

Thus, these orders can only be seen as „quick aid”,¹⁷ but they are definitely capable to reduce contact with the abuser to zero. This can be especially important in the case of small children, because this means that the person who abused them in any way and to any extent cannot get into contact with them for a certain period of time, and it can bring tranquility, even if only temporarily. Regardless of this option, the final solution must be urgently considered: moving away, removing a child from an abusive environment, effectively prosecuting the perpetrator, etc.

3.2. *Specialization*

Departments specializing in crimes committed against relatives are to be found in very few authorities at the national level, even though, in the opinion of legal practitioners, this would be especially necessary, because cases related to domestic violence are a group of cases that is based on complex and unique judgments that require highly specialized expertise. It is therefore regrettable that while e.g. a department of economic affairs exists in several authorities, a department related to domestic violence does not exist at all. „Professionals acting on behalf of the investigative authority, prosecutor’s office, and court must have special knowledge on the subject. They should know, understand, and feel the nature of violence committed among relatives, and it would be expected.”¹⁸ The importance of training and education cannot be emphasized enough, but it is beyond the power of court workers and other legal practitioners: they would like to participate in special trainings, conferences, trainings, and professional meetings, but they can only do so if these are organized and made available to them.

3.3. *Possible solutions, protective measures*

Hereby we mention a few important insights from legal practitioners:

- a) Broad dissemination of the results of research conducted in this subject in the press and other media would contribute to the solution of the problems in question.
- b) Training of the participants of the criminal proceedings (investigating officers, prosecutors, judges), increasing their social sensitivity would

17 DOMOKOS, Andrea (ed.): *A családon belüli erőszak büntetőjogi és társadalmi megítélése*. Budapest, Patrocinium Kiadó, 2017, 22., 84.

18 DOMOKOS op. cit. 89.

improve the situation, but it would be essential to increase the efficiency of cooperation and communication between social support authorities, guardianship authorities, bodies of criminal jurisdiction and families. It would also be of advantage in terms of providing evidence: it would make proving domestic violence easier.

- c) It would help a lot to develop the victims' awareness (the victim is a victim and did not „deserve“ to be humiliated). Victims should be made aware of what legal options they have and they should actually receive the help and assistance they need (this is often lacking in practice), it means more emphasis should be placed on the protection of victims, because this is the only way they can feel safe during the proceedings.
- d) Speaking about what could contribute to solving the problem, we have to mention the more effective crime prevention, the immediate correction of unprofessional measures, the issuing of instructions and guidelines, the enhancement of the trust of the abused, the involvement of a psychologist (who not only prepares his opinion, but also provides real help in the procedure in overcoming the inhibitions and feelings of shame of the abused), and not least the speeding up of the criminal proceedings.
- e) In cases of domestic violence, authorities have to obtain indirect evidence. Humiliation and abuse at homes typically takes place without witnesses, the perpetrators try to take advantage of this, but according to many final judgments, in many cases without any success: there are splendid examples of final convictions of the defendants, who have been denied the abuse in the course of the proceedings.
- f) We can fight domestic violence not only by means of criminal law: those involved need practical assistance, so prescribing rules of conduct, therapies, and other treatments is appropriate. Dealing with aggression can be learned, so the family member who has gone astray should be given help in this respect: real, effective, meaningful and accessible help. The occurrence of such acts can be better suppressed by means other than criminal law. Parenting and education can teach children to respect each other and refrain from violence, which can thereby become part of our culture. The development of the social security system can help the victim to escape from the relationship that has become abusive, and this can prevent the commission of a future crime, its repetition or its becoming more serious.
- g) The financial dependence of women in some relationships is an obviously existing problem, so the goal should definitely be for the authorities to be able to provide actual and meaningful help to the family (therefore, it would

be necessary to reconsider the rules of other areas of law, to provide medical, health and psychological care to the to perpetrators). Perpetrators are usually not aware of their eventual psychological illness, they do not take their medication even if they should, thereby making it difficult and sometimes even impossible to live together, which generates further abuse.

We could list for a long time the characteristics of the cycle of violence¹⁹ as well as physical and mental abuse, which, unfortunately, seems to have escalated into a society-wide phenomenon. That is why, to counterbalance this, the new criminal offence of the 2012 Criminal Code has been introduced, and that is why the legislator considered it important to sanction the psychological oppression preceding physical abuse. Our most important task is to further develop the protective measures, which must be implemented at all costs, with all our strength. Perhaps it is not naivety to believe in the long-term success and effectiveness of these measures. We believe that with the help of social awareness, attitude-shaping campaigns, education, trainings for officers we can slowly understand that aggression is not a solution. Violent behavior is not a form of showing love, so if the victims experiences this, they should leave the abusive environment as soon as possible, with the help of the authorities.

4. Closing remarks

Based on the examined documents of the criminal procedures that have been conducted upon the new offense of domestic violence, it can be established as a fact that a slap is unfortunately followed by more soon enough. Sometimes for one reason, sometimes for another. No one is a rag doll or a sexual toy to be used at the pleasure of the other party. Partnership and good faith, as well as mutual respect and honesty apply to all family relationships and also sexuality. Everyone must take responsibility for their actions, from which there can be no excuse referring to the effect of drugs or alcohol, moreover, in the consequent court practice, all these are aggravating circumstances. Even in an alcohol-influenced state of mind, perpetrators bear full responsibility for their actions. The government has to act quickly because domestic abuse tends to intensify rather than disappear, since the victim, who has already been methodically tortured and deprived of self-confidence, is always „at hand”.²⁰

19 WIDOM, Cathy Spatz: The Cycle of Violence. *Science*, 1989/244, 160.

20 Ökumenikus Segélyszervezet: Vedd észre, ha valami nincs rendben! <https://www.segelyszervezet.hu/hu/veddeszrekampany> (30. 11. 2018)

Tanulmányok
