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Considerations Regarding the Provisions of Law No. 53/2026 on the Prevention and Combating of Femicide and the Violence that Precedes It, as Well as on the Amendment and Supplementation of Certain Legislative Acts

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Abstract: The enactment of Law No. 53/2026 on the prevention and combating of femicide and the violence that precedes it, as well as on the amendment and supplementation of certain legislative acts, is linked to the alarming situation in Romanian society regarding the rising trend of homicides in which women were the victims, with the crimes being committed in most cases by a family member. This aspect is highlighted in the Explanatory Memorandum to this law. Furthermore, this last document also establishes the link between international legislation defining femicide and the importance of Law No. 53/2026 within the framework of national legislation. This initiative is also part of the effort to harmonize national legislation with that at the European level. This paper aims to analyse the provisions of the law in question to determine if the best measures have been taken to prevent and combat femicide.

Keywords: femicide; violence; prevention; combating; criminal law

JEL Classification: K14, K36, K42

1. Introduction

In light of a grim reality in Romania—namely, the rising number of cases involving women killed by a family member, as evidenced by law enforcement records²—the legislator sought to provide enhanced protection for this group by enacting a law to prevent and combat femicide as well as the violence that precedes it.

Entered into force on April 26, 2026, Law No. 53/2026³ on the prevention and combating of femicide and the violence that precedes it, as well as on the amendment and supplementation of certain legislative acts, highlights the means by which the established objectives will be achieved, with the aim of having a unified approach at the national level, in accordance with relevant international legislation⁴.

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² The Explanatory Memorandum to Law No. 53/2026 states that in the first 8 months of 2025, at least 40 cases of violent homicide against women were recorded, of which 33 involved family members as both the perpetrator and the victim (Chamber of Deputies, 2026).

³ Published in the Official Gazette of Romania no. 323 of April 23, 2026.

⁴ We refer to the 2013 United Nations Vienna Declaration on Femicide (United Nations, 2013).

The legislator specifies, in Article 1(7) of Law No. 53/2026, that the application of its provisions requires compliance with the principles of legality of criminalization, proportionality and predictability of criminal law. We consider that this reference is unnecessary given that these principles are inherent to criminal law and no one can be held criminally liable in the absence of the sole basis for this type of liability, namely the offense. Furthermore, the legality of criminalization is accompanied by the legality of criminal sanctions. We note that the legislator does not explicitly refer to this principle in the above-mentioned provision; however, the application of criminal law is carried out in all situations in compliance with this principle, alongside the others.

2. Some Observations on Certain Provisions of Law No. 53/2026

We believe that the legislative model the legislator had in mind when drafting Law No. 53/2026 was that of Law No. 217/2003¹ on the prevention and combating of domestic violence because, just as in the latter law, we find legal definitions for the concepts used, but there is no distinct criminal offense for the phenomenon already indicated in the title of the legislative act.

To be precise, we would like to make the following clarifications: first, the title of Law No. 217/2003 states that the law's objective is to prevent and combat domestic violence. This term is then legally defined in Article 3 of the same law, and Article 4 of Law No. 217/2003 defines the various forms of domestic violence². Upon analyzing these definitions, we observe that each form has a corresponding provision in the Criminal Code³. For example, verbal violence may correspond to the offense of threats under Article 206 of the Criminal Code; sexual violence may correspond to the offences of rape (Article 218 of the Criminal Code) or sexual assault (Article 219 of the Criminal Code), etc. Second, Law No. 217/2003 does not contain a separate criminal provision for the offense of domestic violence; instead, it uses the term "offenses of domestic violence."⁴ This means that the concept in question encompasses various behaviors, each of which is subject to distinct legal classification. Furthermore, based on research conducted on court decisions in Romania, available on relevant websites, we have not found a single conviction for the crime of domestic violence. Furthermore, Law No. 211/2004⁵ on certain measures to ensure the provision of information, support, and protection to victims of crime does not refer to the crime of domestic violence, but rather to the crime of family violence⁶, with regard to the provisions of Article 199 of the Criminal Code.

The same situation applies to Law No. 53/2026, as Article 1(3) defines several terms, namely: femicide⁷ (under letter (a) of that article), intimate partner femicide⁸ (under letter (b)), non-intimate partner

¹ Republished in the Official Gazette of Romania no. 948 of October 15, 2020, as subsequently amended and supplemented.

² We are considering the following forms of violence: verbal, psychological, physical, sexual, economic, social, spiritual, and cyber.

³ Law No. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, as subsequently amended and supplemented.

⁴ For details, see the provisions of Articles 11, 22(4), 27(1) of Law No. 217/2003.

⁵ Published in the Official Gazette of Romania no. 505 of June 4, 2004, as subsequently amended and supplemented.

⁶ For details, see the provisions of Article 21(1) letter a) of Law. No. 211/2004.

⁷ According to Article 1(3) letter a) of Law. No. 53/2026: "Femicide is the intentional killing of a woman, as well as the death of a woman resulting from blows or injuries causing death, or from other intentional crimes followed by the victim's death, regardless of whether the acts are committed by a family member or by another person".

⁸ According to Article 1(3) letter b) of Law. No. 53/2026: "Intimate partner femicide is the intentional killing of a woman or the commission of an intentional crime resulting in the woman's death, committed by a family member, which includes, but is not limited to, murder motivated by the belief that the perpetrator can exercise control and domination over a woman, or if it is intended to prevent or repress the exercise of her fundamental rights or freedoms, as well as if it is committed in the name of culture, customs, religion, tradition, or so-called "honor," or with the aim of preserving or restoring the reputational characteristics of a person, a family, a community, or another similar group".

femicide¹ (under letter (c)), and indirect femicide² (under letter (d)). In light of these legal definitions, we note that the legislator seeks to establish a term that encompasses a wide range of acts that may have a woman as their victim, but which each constitute a distinct offense as described in the Criminal Code. In the definition of femicide, “the intentional killing of a woman” may be represented by the act of murder (Article 188 of the Criminal Code), aggravated murder (Article 189 of the Criminal Code), or either of these two acts, committed in the aggravated form of violence within the family (Article 199 of the Criminal Code), or killing at the victim’s request (Article 190 of the Criminal Code). Also in that definition, the reference to “the death of a woman resulting from blows or injuries causing death” leads to the application of the provisions of Article 195 of the Criminal Code, regarding the offense of blows or injuries causing death. At the same time, the reference to other “intentional crimes resulting in the victim’s death” leads to the possibility of applying the provisions of Article 236 of the Criminal Code, regarding robbery or piracy resulting in the victim’s death, or those of Article 218(4) of the Criminal Code, regarding the crime of rape resulting in the victim’s death, or Article 219(3) of the Criminal Code, regarding the crime of sexual assault resulting in the victim’s death and so on. The same reasoning applies to the other three forms of femicide. In fact, the first term, “femicide”, encompasses the other three, judging by the content of each individual definition. Moreover, there is no provision in Law No. 53/2026 that criminalizes the act of femicide. Attempt is one of the forms of intentional crime, classified according to the stages of its commission. Although there is no separate criminalization of the act of femicide, the legislator establishes in Article 1(4) of the Law. No. 53/2026 that “there is an attempt at intimate or non-intimate femicide when the decision to act in accordance with the provisions of paragraph (3)(b) and (c) has been carried out through acts of execution, but the execution was interrupted or did not produce its effect due to circumstances beyond the perpetrator’s control.” Not only is this definition of attempted intimate or non-intimate femicide unnecessary, but it is also incorrect. It is unnecessary because the definition of attempt is already provided in Article 32 of the Criminal Code—a legal provision of general applicability—and because an act cannot constitute an attempt if it is not itself a crime. When the legislator intended to criminalize the attempt to commit a crime, it expressly provided for it. This is the case for the attempt to commit murder, aggravated murder, robbery, etc. However, in the case of femicide—and even less so in its forms of intimate or non-intimate femicide—we do not have a distinct criminalization, as we have shown above. Therefore, we cannot have a distinct reference to the attempt of these concepts, which are not themselves crimes. The provision from Article 1(4) of Law No. 53/2026 is also incorrect because the reference should be made to the fact that , “an attempt consists of carrying out the intention to commit a crime, although such action was interrupted or did not produce the desired result”, like in Article 32(1) of the Criminal Code, not “to the decision to act” in a certain way, as it is now provided for in Law No. 53/2026, this last provision raising the

¹ According to Article 1(3) letter c) of Law. No. 53/2026: “non-intimate femicide is the intentional killing of a woman or the commission of an intentional crime resulting in the woman’s death by a person other than a family member, under the following circumstances: 1. the perpetrator exercises or claims the right to exercise control or domination over the woman; 2. for the purpose of preventing or suppressing the exercise of the woman’s fundamental rights or freedoms; 3. the act is committed in the name of culture, customs, religion, tradition, or so-called “honor,” or with the aim of preserving or restoring the reputational characteristics of a person, a family, a community, or another similar group; 4. in a context of sexual exploitation, trafficking, and exploitation of vulnerable persons, as provided for in the Special Part—Title I—Chapter VII “Trafficking and Exploitation of Vulnerable Persons” of Law No. 286/2009 on the Criminal Code, as subsequently amended and supplemented, or of fraudulent border crossing or in any situation involving the smuggling of migrants; 5. in a context of sexual violence; 6. within a relationship of unequal power or abuse of power by the perpetrator over the victim, or by taking advantage of the victim’s vulnerability caused by age, illness, physical or mental disability, a situation of dependency, or any other cause; 7. the act is committed in any other context, on the basis of the victim’s gender”.

² According to Article 1(3) letter d) of Law. No. 53/2026: “Indirect femicide refers to the death of a woman as a result of female genital mutilation or similar acts, as well as a woman’s suicide resulting from intimate partner violence or violence within the family”.

question, from a practical and theoretical perspective, of whether an offense can be committed in the form of an attempt only with direct intent or also with indirect intent—an issue that was resolved with the entry into force of the Criminal Code, in the sense that both forms of intent are possible in the case of an attempt. Furthermore, references within Law No. 53/2026 to a crime and to an attempt to commit that crime should be avoided because, as mentioned above, an attempt is a form of a crime, and, pursuant to the provisions of Article 174 of the Criminal Code, the commission of a crime entails the commission of the act both in its completed form and in the form of an attempt, when the law punishes it.

3. Some Observations on the Amendments and Additions Made to the Criminal Code by Law No. 53/2026

The first amendment to the Criminal Code concerns Article 66(1¹), which pertains to the period for which the court may order the deprivation of certain rights as an additional penalty. The amendment extends the period from 1 to 5 years to 1 to 10 years for certain personal rights, such as: parental rights, the right to serve as a guardian or conservator, the right to possess, carry, and use any category of weapons, the right to communicate with the victim or their family members, with the persons with whom the offense was committed, or with other persons designated by the court, or to approach them, the right to approach the victim's residence, workplace, school, or other places where the victim engages in social activities, under the conditions established by the court. In light of the need for better protection of vulnerable individuals who are victims of domestic violence, we consider this legislative amendment to be appropriate.

The second amendment to the Criminal Code concerns the provision criminalizing the act of aggravated murder, set forth in Article 189(1), by adding three additional aggravating circumstances, namely: “letter (j) against a person as a means of exercising control or domination due to the fact that the perpetrator is or was in a marital relationship with the victim or in a relationship similar to that between spouses, regardless of the duration of such a relationship or whether the perpetrator lived with the victim, letter (k) for reasons related to race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or affiliation, wealth, social origin, age, disability, illness, or HIV/AIDS, or for other similar circumstances; and letter (l) against a person because of their refusal to enter into a marriage or to cohabit in a relationship similar to that between spouses, or motivated by divorce, de facto separation, or the victim's withdrawal from a relationship similar to that between spouses”. First, Article 189(1)(k) incorporates into this criminal provision the general aggravating circumstance set forth in Article 77(h) of the general part of the Criminal Code. However, there are two differences from the legal provision in the general part of the Criminal Code. Thus, while Article 77(h) of the Criminal Code refers only to a non-contagious chronic illness, the provision in Article 189(1)(k) of the Criminal Code refers to any illness, as the legislator makes no distinction. A second difference is that the legislator no longer refers to the perpetrator's subjective assessment regarding the causes listed above as grounds for a person's inferiority relative to others. Therefore, the general aggravating circumstance may apply in the case of any criminal provision if it is established in a specific case that it existed. If we consider the killing of a person for the reasons mentioned above, the offense of aggravated murder will be established based on this circumstance. Second, the circumstances described in letters (j) and (l), as well as those in letter (k), make no reference to the gender of the person who may be the perpetrator or the victim, a fact that is consistent with the constitutional provisions regarding the equality of citizens' rights, as enshrined in the Romanian Constitution¹. In the context of the legal definition of femicide, as set forth in Article

¹ The 1991 Constitution of Romania, republished in the Official Gazette of Romania No. 767 of October 31, 2003.

1(3)(a) of Law No. 53/2026, we believe that the three new circumstances added to the provision criminalizing aggravated homicide are not justified. We assert this because the terminology used by the legislator in these new legal provisions is not consistent with the terms already established in criminal law. For example, reference is made to a “marital relationship” in a context where the definition of a family member in Article 177 of the Criminal Code specifies the status of spouse. We consider it appropriate to propose *de lege ferenda* that this new phrase be replaced with “the perpetrator and the victim are spouses.” Furthermore, unlike the definition of a family member in Article 177 of the Criminal Code, the scope of the criminalized offense is thus extended to relationships similar to those between spouses, regardless of whether the perpetrator lived with the victim or not. However, in the case of relationships similar to those between spouses, the mandatory condition for being considered a family member is cohabitation, regardless of duration. We also note that, for the most part, the provision under letter j) overlaps with the aggravated form of aggravated murder under Article 199(1) of the Criminal Code, in the context of violence within the family, when the act is committed against a family member. The only extension of the scenario under letter (j) applies to relationships similar to those between spouses, even when they do not cohabit. Thus, a situation may arise in which, in practice, for one and the same circumstance—namely, the status of family member under criminal law—whether we consider the case of a spouse or of those in relationships similar to those between spouses when they cohabit, a double aggravation of criminal liability may occur, an aspect that is not permitted under criminal law. Furthermore, regardless of the definition of “family member” contained in Law No. 53/2026, in criminal law, the definition in Article 177 of the Criminal Code applies for the interpretation of any criminal provision in which the term is used. Third, with regard to the application of letter (l) to specific cases, we consider, on the one hand, that it is difficult in practice to prove the perpetrator’s motive, as described in this provision, given the personal nature of the refusal either to enter into a marriage or to have a relationship similar to that between spouses. On the other hand, in the context of the definition of a family member under criminal law, *de facto* separation does not affect the status of family member for spouses; thus, in this scenario as well, there will be an overlap with the provision of Article 199(1) of the Criminal Code, as it is still a case of aggravated murder committed against a family member.

The third amendment to the Criminal Code concerns the provisions criminalizing the act of inducing or facilitating suicide, as set forth in Article 191 of the Criminal Code, with the criminal provision being supplemented by the provisions of paragraph (3¹) as follows: “If the acts referred to in paragraphs (1)-(3) are committed against a person over whom the perpetrator exercises or claims to be entitled to exercise control or domination as a result of the fact that the perpetrator is or was in a marital relationship with the victim or in a relationship similar to that between spouses, regardless of its duration or whether the perpetrator lived with the victim, the special limits of the penalty provided by law shall be increased by one-fourth.” We appreciate the legislator’s effort to provide better protection for vulnerable individuals; however, in the context of the definition of femicide contained in Law No. 53/2026, some of the criminal offenses outlined in the newly introduced paragraph are not feasible in practice. Thus, given the express provision regarding the prior or current existence of a marital relationship between the perpetrator and the victim as a basis for exercising or claiming to exercise control or domination over the victim, this situation is not permitted under national law for persons under the age of 16¹ or for persons lacking legal capacity², since, in accordance with the provisions of the Civil Code³, such persons

¹ Article 294(1) of the Civil Code.

² Article 299 of the Civil Code.

³ Law No. 287/2009 on the Civil Code, republished in the Official Gazette of Romania No. 505 of July 15, 2011, as subsequently amended and supplemented.

cannot legally enter into marriage. The same reasoning applies to the amendment made to Article 191(4) of the Criminal Code, which defines the mitigated form of the offense, with the distinction lying in the immediate consequence—in this latter case, being an attempted suicide rather than a suicide; a reference to paragraph (3¹) has been added.

The fourth amendment to the Criminal Code concerns Article 195 of the Criminal Code, regarding the offense of assault or injury resulting in death. The amendment consists of removing from the text of that article the reference to paragraph (2¹) of both Article 193 and Article 194 of the Criminal Code. We note that paragraph (2¹) was added¹ by the legislator to both Article 193 and Article 194 of the Criminal Code to provide enhanced protection for a vulnerable category of persons. We do not understand the rationale behind amending the provisions of Article 195 of the Criminal Code in the context of the definition of femicide.

The fifth amendment to the Criminal Code concerns the introduction of Article 195¹, titled “Acts Committed under Aggravating Circumstances.” The first paragraph of this new article establishes an aggravated form for each of the three offenses, namely assault or other acts of violence (Article 193 of the Criminal Code), bodily injury (Article 194 of the Criminal Code), and assault or bodily injury resulting in death (Article 195 of the Criminal Code). There will again be an overlap with the provisions of the aggravated form set forth in Article 199(1) of the Criminal Code, regarding the scenario involving a family member, just as is the case with the scenario of the crime of aggravated murder, analyzed above. Under paragraph (2) of Article 195¹, each of the offenses of murder, aggravated murder, killing at the victim’s request, incitement or facilitation of suicide, assault or other violence, bodily injury or assault or injury resulting in death is considered more serious when the act was committed by an adult in the presence of a minor. For this circumstance to exist, it must be proven that the adult knew or could have realized of the minor’s presence, even if the minor was not present for the entire duration of the act, as well as that the individual is a minor, without knowing the exact age. One issue that may arise is the following: will this aggravating circumstance be taken into account when the only minor present at the time the act of assault or other violence, or bodily injury, is committed is the victim themselves, in light of the provisions of Article 193 or Article 194(2¹)(b) of the Criminal Code? We believe the answer should be affirmative, given the need for greater protection of minors.

The sixth amendment to the Criminal Code concerns the content of Article 199 of the Criminal Code, regarding violence within the family. Thus, in addition to the previous references, a reference to Article 195¹ has been added to paragraph (1), when the acts are committed against a family member. We state that the definition of “family member” in this provision is that set forth in Article 177 of the Criminal Code, not that in Article 1(5) of Law No. 53/2026, which refers to the provisions of Law No. 217/2003 and which includes the definition from the Criminal Code but is not limited to it. Therefore, the issues analyzed regarding the legislative overlaps referred to above in this paper remain valid. Paragraph (2) provides that criminal proceedings are initiated ex officio in cases involving the offense of assault or other acts of violence against a family member, or in the cases specified in Article 195¹ of the Criminal Code. This is a legislative choice with which we agree. Paragraph (3) includes a reference that previously existed in Article 199(2) of the Criminal Code, namely the possibility of initiating criminal proceedings ex officio for the offense of negligent bodily injury committed against a family member, a provision with which we fully agree.

¹ Paragraph (2¹) was added to Article 193 and 194 of the Criminal Code through the provisions of Law No. 248/2023 amending and supplementing Law No. 286/2009 on the Criminal Code, published in the Official Gazette of Romania No. 673 of July 21, 2023.

The seventh amendment to the Criminal Code concerns the repeal of the provision in Article 218(5) of the Criminal Code regarding the initiation of criminal proceedings for the commission of the crime of rape—both in its basic form and in its assimilated form—upon the prior complaint of the victim. In the context of the definition of femicide, we do not understand the legislator's choice regarding a provision that was specific to the crime of rape, but we respect it.

The eighth amendment to the Criminal Code concerns the modification of the provision in Article 219(5) of the Criminal Code, which, prior to the amendment, had the same wording as Article 218(5) of the Criminal Code, to which we referred earlier, but was applicable to the basic form of the offense of sexual assault. This time, however, the legislator not only repealed the provision—so that criminal proceedings will henceforth be initiated only *ex officio*—but also replaced it with a reference to reconciliation as a ground for excluding criminal liability for the commission of the basic form of the offense of sexual assault. Even in this scenario, we do not understand the legislator's rationale for creating a difference in legal treatment between a person who commits rape and one who commits sexual assault, both in their basic forms, although in both cases criminal proceedings are initiated *ex officio*, the first offender cannot benefit from reconciliation as a ground for excluding criminal liability, whereas the second can. Prior to the amendments introduced by Law No. 53/2026, these two offenses were treated identically. Now there are differences in legal treatment.

The ninth and final amendment to the Criminal Code concerns the amendment of the provision in Article 224, paragraph (2) of the Criminal Code, to the effect that criminal proceedings are initiated upon the prior complaint of the victim only for the basic form of the offense of trespassing, not for the aggravated form, when the act is committed by an armed person, at night, or through the use of false pretences. In the context of the definition of femicide, we do not understand the rationale behind this amendment but we respect it.

4. Conclusions

As it has been noted throughout this paper, the legislator has amended many of the legal provisions in the Criminal Code. It is within its right—and indeed advisable—to do so at various intervals so that criminal provisions keep pace with societal developments. We believe, however, that better coordination is needed to ensure consistency among the various provisions of criminal law. It remains to be seen whether these legislative changes alone will be sufficient to reduce cases of femicide. We believe, however, that this last measure alone cannot achieve the desired effect; education starting from a very young age is also necessary to prevent situations of domestic violence or femicide from occurring.

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