



LIFTING THE LAST CURTAIN
A Report on Domestic Violence in Romania

February 1995

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Lifting the Last Curtain: A Report on Domestic Violence in Romania
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I. PREFACE

In May and June 1994, Minnesota Advocates for Human Rights (hereinafter Minnesota Advocates) sent a delegation of four attorneys to Romania to investigate domestic violence and to develop recommendations based on their findings. The delegation consisted of Elizabeth Bruch, a lecturer with the Civic Education Project in Bucharest; Robin Phillips, a private attorney with the Briggs and Morgan law firm in St. Paul; Anne Taylor, a Hennepin County Prosecutor of domestic assault; and Cheryl Thomas, a Minnesota Advocates board member. The delegation spent twelve days in Romania meeting and interviewing judges, lawyers, doctors, human rights groups, women's groups, students, and government officials.¹

The delegation interviewed approximately eighty people in Bucharest and Brasov, a city north of Bucharest. The delegation also collected a survey on domestic violence. Throughout the mission, the delegation used the following definition of domestic violence based in part on language used in the United Nations publication, **Strategies for Confronting Domestic Violence: A Resource Manual**:

Domestic violence can be defined as the use of force or threats of force by a husband or boyfriend for the purpose of coercing and intimidating a woman into submission. The violence can take the form of pushing, hitting, choking, slapping, kicking, burning or stabbing.²

A. Purpose of Mission

The purpose of the Minnesota Advocates mission to Romania was to use the standards outlined in international human rights instruments to: 1) investigate domestic violence as a human rights abuse in Romania; 2) determine if there are any government or social programs to assist victims of domestic abuse; 3) analyze the legal system's response to domestic violence; and 4) formulate recommendations based on the delegation's findings.

¹ Ms. Bruch lived in Bucharest for nine months prior to the mission and did background research during that period. She remained in Romania for an additional three weeks after the mission to do follow-up work.

² The delegation's decision to define domestic violence as violence against women reflects the research revealing that women are the usual victims of violence in the home. United Nations Centre for Social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence: A Resource Manual*, at 7, U.N. Doc. ST/CSDHA/20 (1993). One source reports, "If males are victims in approximately 10% of the cases, they are aggressors in approximately 88% of the cases, while females are victims in 90% and aggressors in 10% of the cases." Alexandru Mircea, *Domestic Violence* in JOURNAL OF THE POLICE ACADEMY ALEXANDRU IOAN CUZA 98, 99 (Bucharest 1994).

B. Summary of Findings

Domestic violence is a pervasive problem in Romania. The Romanian government has failed to respond appropriately to the problem. This failure to respond violates the Romanian Constitution³ and Romania's international legal obligations as a member of the United Nations. These violations include the following:

1. Romanian women who are routinely abused in their homes are being denied their fundamental rights to security of the person as guaranteed in the Universal Declaration of Human Rights⁴ and freedom from torture and cruel and inhuman or degrading treatment as guaranteed in the International Covenant on Civil and Political Rights.⁵
2. The Romanian government has failed to prosecute effectively crimes of domestic assault. This failure violates Romania's obligation under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to provide an effective and adequate remedy for acts violating fundamental rights guaranteed by its Constitution or by law.
3. The Romanian government is not in compliance with the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women⁶ (including General Recommendations 12 and 19 of the Committee on the Elimination of Discrimination Against Women⁷) and the Declaration on the Elimination of Violence Against Women,⁸ including the following:
 - a. Romania has not met its obligation to protect women from violence perpetrated by private persons;
 - b. Romania has not met its obligation to ensure that women who are victims of violence are provided with health and social services, facilities and programs and other support structures to promote their safety and physical and psychological rehabilitation; and

³ The Romanian Constitution, Article 20, provides that its provisions must be interpreted in conformity with international law. When it is inconsistent, international law supersedes Romanian law.

⁴ G.A. Res. 217 A(III) Dec. 10, 1948, U.N. Doc. A/810 (1948).

⁵ G.A. Res. 2200 A(XXI), December 16, 1966, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976.

⁶ G.A. Res. 34/180, U.N. GAOR Supp. (No. 46), U.N. Doc. A/Res/34/180, *entered into force* September 3, 1981.

⁷ U.N. Doc A/44/38 (1989); U.N. Doc A/47/38 (1992).

⁸ G.A. Res. 48/104 (1993).

- c. Romania has not met its obligation to develop comprehensive legal, political, administrative and cultural programs to prevent violence against women.

II. INTRODUCTION: EVIDENCE OF DOMESTIC VIOLENCE IN ROMANIA

*When you were at your mother's house
You ate honey
And put cream on your cheeks
And now you eat strawberries,
And on your cheeks, slaps and fists.⁹*

As is clear from historical references in literature to countless stories of women's lives in Romania today, domestic violence is deeply ingrained in the many layers of Romanian culture. Laura Grunberg, the director of the Society for Feminist Analysis (ANA), a recently formed group of professional women in Bucharest, has written:

Domestic violence is a major problem. Women, terrified and shamed, believing themselves to be guilty, also don't believe they have a duty to themselves and to their family to ask for social support and to end the violence.¹⁰

Two human rights workers in Bucharest commented to the mission delegation that if the definition of domestic abuse included slapping, it would be difficult to find a woman in Romania who had not been abused.¹¹ They noted that women often fight back.

The delegation found evidence that domestic abuse crosses all social and economic lines.¹² For example, after offering the general opinion that domestic violence was largely a problem of

⁹ This is a poetic expression used during the wedding ceremony in the Transylvanian region of Romania. The quotation is taken from Gail Kligman, *The Wedding of the Dead: Ritual, Poetics, and Popular Culture in Transylvania* 132 (1988). "The bride is always warned that her husband is not her brother and her mother-in-law is not her mother, and both will beat her." *Id.* at 132.

¹⁰ Laura Grunberg, *Women's Empowerment Through Information* (April 1994) (unpublished).

¹¹ Interview with a Romanian human rights group on June 1, 1994. Notably, in a recent article in the Romanian Police Academy Journal, the writer reported that a surprising number of criminal offenses are ". . . committed in an environment where there should be only understanding, affection and peace, within the family." Mircea, *supra* note 2, at 98.

¹² Alexandru Mircea emphasizes that the problem of domestic violence is not confined to the less educated, "no socio-cultural group being immune to this type of aggression." Mircea, *Id.* at 99.

poor and uneducated people, many of the professional women interviewed confided that they themselves, colleagues, close friends, or family members had been victims of domestic violence.¹³

The delegation learned of several Romanian organizations which have recognized domestic violence as a serious social problem and are committed to confronting the issue. For example, the Romanian Independent Society of Human Rights (SIRDO) has established a program focusing on women's rights as human rights called "Genesis." Genesis includes an initiative called "Stop the family violence." The goal of this initiative is "the realization of a harmonious family climate by stressing women's and children's rights according to international covenants."¹⁴

A. Evidence from the Health Care Community

The delegation met with health care professionals from Bucharest, including a group of four doctors from a Bucharest Hospital, a clinical psychologist, a gynecologist, a dentist, several physicians who worked with a non-governmental public health organization and a doctor of forensic medicine. All but one of the medical professionals reported that domestic violence was a pervasive problem in Romania that needed attention.

1. Interviews with Health Care Professionals

The delegation met with a gynecologist who treats approximately 1,000 women factory workers.¹⁵ Some of these women live in the city of Bucharest and some reside in the surrounding countryside. The doctor did not see each patient on a regular basis, but only when they sought treatment or advice. She estimated that she sees each of her patients once every four or five months.

The gynecologist estimated that one out of ten of her patients has been a victim of domestic assault. According to her, these patients have come to her at least once with visible signs of abuse inflicted by their husbands or intimate partners. The doctor described the injuries she has seen as knife cuts, severe bruises, and black eyes. She stated that her patients have reported being raped by their husbands and boyfriends.¹⁶

The doctor reported that in her experience, the longer her patients stayed in an abusive relationship, the more cruel the violence became. She stated that she often warns her patients that they should leave abusive partners or they may be killed. Her patients often reported that their partners were drunk when the violence occurred.

¹³ Interview with Bucharest judges on June 3, 1994; interview with students in Bucharest on June 3, 1994; meeting with Bucharest media professionals on May 26, 1994.

¹⁴ SIRDO is a non-governmental, non-profit organization founded in Bucharest in 1990. This language is taken from a brochure published by SIRDO which describes the program of the organization.

¹⁵ This interview occurred on May 30, 1994.

¹⁶ Romania does not recognize marital rape as a crime. See Romanian Criminal Code, Title II *Crimes Against the Person*, Chapter I, Sec. III, Article 197.

The gynecologist described in detail several cases of domestic assault. One patient had been beaten with a police-like baton; another committed suicide after repeated assaults by her husband. The doctor described one especially horrifying case of a patient who was a factory engineer. This patient's husband held her hands on a hot stove until they were so severely burned that she had to have several fingers amputated. This incident followed repeated assaults by the husband.

The delegation also met with a doctor and a hospital administrator in Bucharest.¹⁷ The doctor estimated that one woman per week arrives at the hospital with children seeking refuge from her violent husband or partner. She explained that the hospital's informal policy is to allow the women to stay two or three days, providing food and a place to sleep, but the women are then asked to leave. The hospital has approximately 200 workers, most of whom are middle class women. The administrator reported that she frequently hears reports from the hospital employees of injuries inflicted by their husbands or partners. These women sometimes seek treatment at the hospital for their injuries.

The administrator related several detailed stories of women employees suffering ongoing violence in their homes. She described one employee who regularly comes to work with visible injuries. The woman left her husband after being repeatedly beaten by him. The women's three older children, two boys and one girl, then continued the violence against her.

The delegation also met with a clinical psychologist in Bucharest.¹⁸ The psychologist estimated that she treats at least two patients per week who have been victims of assault by their intimate partners. She also estimated that three out of ten of her patients who are hospitalized for mental illness have been subjected to abuse by their intimate partners, and the abuse is a cause of their emotional problems.

This psychologist reported that she is shocked by the passivity and acceptance of women of this physical abuse. She attributed this acceptance in part to Romanian cultural norms which dictate that a husband has a right to beat his wife.

Finally, the delegation interviewed a senior physician at the Emergency Hospital in Bucharest; three younger doctors were also present.¹⁹ The senior physician estimated that during an average twenty-four hour work shift at the Emergency Hospital, he treated three victims of domestic assault. He explained that the incidence of domestic violence had increased since the change in government in 1989 and was caused by alcoholism and poverty. When asked whether he would characterize domestic violence as a problem which needed attention, he responded, "Definitely not. It is at a normal rate."

¹⁷ The delegation met with the hospital administrator twice. The first interview occurred at her home in Bucharest on May 28, 1994. The second interview occurred at the hospital with both the administrator and the physician on May 31, 1994.

¹⁸ This interview occurred on May 31, 1994, at the office of the psychologist in Bucharest.

¹⁹ This interview occurred on May 29, 1994, at the Emergency Hospital in Bucharest.

2. Statistics from the Health Care Community

At the close of the interview with the doctors at the Bucharest Emergency Hospital, the senior physician suggested that the delegation obtain actual statistics on the incidence of domestic violence from the chief administrator at the hospital. The delegation met with the chief administrator but was informed that no such statistics were available.

At the request of the delegation, the Forensic Hospital in Bucharest compiled some statistics on domestic violence.²⁰ These statistics were not kept as part of regular hospital procedures. The doctor at the Forensic Hospital explained that due to legal restrictions, he was unable to provide the delegation with the total number of women seeking legal certificates at the hospital. However, the doctor provided other statistics relevant to the issue of domestic assault for a period from March 1993 to March 1994. The data is outlined on the attached Exhibit A. In summary, it shows that 28% of women treated at the Forensic Hospital during this period were beaten by an intimate partner.

The doctor commented that these percentages represent the "tip of the iceberg" (in Romanian, "varful aisbergului") because victims frequently seek treatment at the facility only after several assaults.

B. Evidence from the Legal Community

The delegation met with members of the legal community: the Minister of Justice, the Judicial Officer of the Ministry of Health, three members of Parliament, three judges in Bucharest, two judges from Brasov,²¹ the Dean of the Magistrates' Training School, eight professors at the Police Academy, members of the Women Lawyers Association in Bucharest, and several law students.

The three parliamentarians reported that domestic violence is widespread in Romania.²² One stated that the issue is not getting the attention it deserves and is treated as a "secondary problem." One member of parliament described visiting a women's prison in Romania where 100 women were imprisoned for homicide. According to this official, sixty of the women had been convicted of killing their husbands and all sixty claimed that they were victims of domestic abuse.

²⁰ See p. 13 for a description of the procedures of the Forensic Hospital.

²¹ One of these judges lived in the United States for eight months prior to the mission and consulted with Minnesota Advocates during that time.

²² This interview took place on May 31, 1994. There are fewer women in parliament since the 1989 transition in government. "The collective leadership of the government party has only three women among its 25 members. The same proportions hold for the main opposition parties and for the trade unions. There are no women at all among the 40 prefects and the 25 ministers; only one woman among the 59 state secretaries and the 199 senators; and only 22 women among the 397 deputies." Maria Neder, *Women in Post-communist Romania* in GAINS AND LOSSES: WOMEN IN TRANSITION IN EASTERN AND CENTRAL EUROPE 42, 45 CEPES/UNESCO (1994).

The delegation met with a judge in Brasov, a city north of Bucharest; this judge presided over both civil and criminal cases, except homicides.²³ He offered the delegation a review of the ten criminal complaints that had been filed in Brasov in April 1994. In nine of the ten cases reviewed, a woman was the victim of family violence. In five of those ten cases, a woman was assaulted by her husband or ex-husband.

On June 3, 1994, the delegation met with two judges in Bucharest. Both of these judges reported that violence against women in the home is a common occurrence in Romania, and that the problem touched all levels of society. One of these judges had been beaten by her ex-husband. This judge estimated that she is assigned one to two cases per day involving women beaten by their husbands or boyfriends. She explained that most of these cases resulted in a withdrawal of the criminal complaint. When asked to elaborate on this statement, she offered her opinion that the complaints were commonly filed as leverage in divorce proceedings or marital disputes. When the divorce was finalized or the dispute resolved, the complaint would be withdrawn. The judges agreed, however, that most cases of domestic violence never arrived in the court system at all. One judge commented that the fear of more violence prevented women from reporting and prosecuting assaults by their intimate partners.

Several judges and lawyers reported to the delegation that violence is a major cause of divorce in Romania. The two Bucharest judges interviewed by the delegation estimated that 60% of divorce cases in their court involved claims of physical violence. One judge from Brasov estimated that he hears thirty divorce cases per week and that half of those cases involve claims of domestic violence. Another judge from Brasov also estimated that the majority of divorce cases assigned to her involved claims of domestic violence.²⁴

C. Evidence from Other Sources

1. Interviews

On May 30, 1994, the delegation met with the director of a non-profit coalition of churches. The director stated that domestic violence is a problem which penetrates all classes in Romania. She explained that she encountered domestic violence in her work and also in her personal life. She related a story of a friend living in rural Romania whose husband, a priest, has assaulted her repeatedly since the beginning of their marriage. The director estimated that her friend is assaulted by her husband three times per year. The director related one incident where she was visiting her friend and witnessed the husband beat his wife with a tree branch. She described another friend from Bucharest whose husband repeatedly punched her with his fists. Both women remain married

²³ The interview took place on June 2, 1994 in the Brasov courthouse.

²⁴ "According to data provided by one of the six civil courts which function in Bucharest, the principal cause of divorce (38 percent of the cases having been initiated by women) is 'beating, brutalities, and insults', plus another 10 percent due to alcoholism, a contributing factor in violence." Neder, *supra* note 19, at 50. According to the U.S. State Department, a Romanian human rights organization reported that in 1993 over 60 percent of cases brought to them involved women who wanted to document assaults for their divorce hearing. 1993 U.S. State Dept. Country Reports on Human Rights Practices, *Romania* at 1018.

to their abusive spouses. In addition, the director described a time when she was hospitalized and shared a hospital room with a woman whose jaw had been broken by her husband.

On May 25, 1994, the delegation interviewed a group of media professionals. After a long discussion with the entire group on issues affecting women in post-communist Romania, one journalist described a climate of general indifference by the media to the issue of domestic violence. After the group meeting, this journalist asked to speak with the delegation individually; she reported that her daughter had been a victim of domestic assault. On May 29, the delegation interviewed the journalist's daughter, age 21. Almost immediately after her son was born in 1990, her husband began to assault her, usually by kicking or punching her. After three weeks of repeated assaults, both actual and threatened, the victim's husband abandoned the family. The victim moved in with her mother and has divorced her husband. This young woman reported that two neighborhood friends were also victims of assault by their husbands.

2. The Survey

In preparation for the mission to Romania, the delegation consulted with Dr. Jeffrey Edleson, Ph.D., a social scientist at the University of Minnesota who has developed and implemented surveys on domestic violence locally, nationally and in Singapore and Israel. Based on this consultation, and with the input of two Romanian women, the delegation prepared a brief questionnaire about the nature and extent of domestic violence. The questionnaire, with the Romanian translation, is attached as Exhibit B.

The delegation collected 301 questionnaires. Fifty-three were collected during the twelve-day mission from people interviewed by the delegation. The remaining surveys were distributed by a non-governmental public health organization in Bucharest during the three-week period following the mission in June 1994.²⁵

To summarize, the following are the responses to three of the thirteen questions:

4. Do you personally know any women who have been hit by their husbands or partners?

Yes 248 No 53

9. Has your spouse or partner ever hit, slapped or pushed you?

Yes 72 No 218 (Eleven surveys offered no clear response.)

11. Has your spouse or partner ever stabbed or used another weapon on you?

Yes 27 No 265 (Nine surveys offered no clear response.)

²⁵ The survey constitutes a convenience sampling rather than a random representative sampling on the nature and extent of domestic violence in Romania. A random representative sampling would produce more accurate data.

III. CAUSES OF DOMESTIC VIOLENCE

As in many other countries where the problem has been studied, domestic violence has its roots in the subordinate role women have in private and public life in Romania.²⁶ As one writer states, "Men's domination and women's submissiveness are seen as rooted in a natural and religious order beyond human judgement."²⁷ Another writer explains, "That the husband represented the family to the outside world and made the most important decisions was never questioned. Even in highly educated couples, men beat their wives to show their authority."²⁸

The problem of domestic violence has been aggravated by the multitude of socio-economic problems facing the Romanian people in the period of transition from communism.²⁹ Many people interviewed by the delegation reported that the seriously depressed economy has created tensions within the family which cause incidents of violence to occur.³⁰ The delegation was also repeatedly told in interviews that the increase in alcohol abuse since the change in government in 1989 aggravated domestic violence.

Domestic violence is also complicated by the housing shortage in Romania. Often, people are forced to stay in abusive relationships because they have no other place to go. One young Romanian writer recently explained:

As in any other ex-communist country, there is a chronic housing shortage in Romania. Since state construction suddenly stopped after 1989 a rapid increase in house prices has occurred. Between 1990 and 1993, the cost of a flat increased

²⁶ For a discussion of the causes of domestic violence, see *Domestic Violence, Report of the Secretary-General*, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders at 8, U.N. Doc. /Conf.144/17 (1990).

²⁷ Doina Pasca Harsanyi, *Women in Romania*, in GENDER POLITICS AND POST-COMMUNISM 39, 39 (Nanette Funk and Magda Mueller eds. 1993).

²⁸ Maria Hausleitner, *Women in Romania: Before and After the Collapse*, in GENDER POLITICS, *supra* note 24, at 53, 56. Another Romanian writer explained, "...the rapes, blows and injuries inflicted on women within their very families are, in general, considered to be part of the normal family order and explain the subordination relationship between man and women." Daniela Sirbu, *Unexpected Consequences of Transition: A Feminist Point of View* 7 (June 1994) (unpublished).

²⁹ One extreme example of social and economic problems combining and culminating in an incident of violence was reported by a scholar analyzing abortion and adoption in post-communist Romania. A young woman had been forced by her husband to give up three of her children for adoption in exchange for payment in the form of money and material goods. She explained, "What can I do? He beats me when I say no. He will hurt my belly, so what can I do? I am only 21." Gail Kligman, *When Abortion is Banned: The Politics of Reproduction in Ceaucescu's Romania, and After*, The National Council For Soviet and East European Research, May 26, 1992.

³⁰ For example, Romanians today face extremely difficult economic circumstances. The New York Times reports, "More than half the population of 23 million live below the poverty line - an income of \$160 a month for a family of four. Most households spend up to 70 percent of their income on food." Jane Perlez, *Uprising or Coup? Romanian Ask 5 Years Later*, N.Y. Times, December 25, 1994. For a discussion of the serious economic situation faced by Romanian families today, *also see* Harsanyi and Hausleitner in GENDER POLITICS AND POST-COMMUNISM, *supra* notes 24 and 25.

*more than 100 times. Most newly married young people live with their parents in small flats and are unable to offer decent living conditions for children.*³¹

Serious social and economic problems not only aggravate domestic violence but also serve to divert attention and resources from the problem. Several sources interviewed by the delegation believed that conditions such as the high rate of unemployment and the large number of street children and orphans needed to be addressed before resources are committed to confronting domestic violence. That opinion, however, was not universally shared. Most of the Romanian women interviewed by the delegation felt that domestic violence is a pervasive and increasing problem in their country, that it affects every aspect of women's lives and that the problem needs immediate attention.

IV. ROMANIAN LAWS AND THEIR IMPLEMENTATION

A. The Constitution

The Romanian Constitution provides explicit protection for fundamental human rights. Article 22 states:

(1) The right to life, as well as the right to physical and mental integrity of person are guaranteed.

(2) No one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment.

Article 23 of the Constitution provides:

(1) Individual freedom and security of person are inviolable.

These provisions should be construed to establish the fundamental right of all Romanians to be free from all forms of violence, including domestic violence.

B. The Criminal System

There is no specific language within the Romanian Criminal Code which provides protection to victims of domestic violence; they fall generally within the protections applicable to any assault and battery victim. The Romanian Criminal Code defines five levels of assault: Battery, Bodily Injury, Unintentional Bodily Injury, Aggravated Bodily Injury and Battery Causing Death.³² The sentences vary depending on the level of injury; the maximum sentence is ten years

³¹ Daniela Sirbu, *Unexpected Consequences of Transition: A Feminist Point of View* 11 (June 1994) (unpublished).

³² Romanian Criminal Code, Title II *Crimes Against the Person*, Chapter I, Sec. II, Articles 180-84.

for Battery Causing Death. The level of injury is defined by the number of days of medical treatment required.

In all cases except Aggravated Bodily Injury and Battery Causing Death, the injured party has the burden of preparing the criminal complaint and pursuing the case through final resolution. Where the injured party initiates the complaint, involvement of the prosecutor is limited to some participation in courtroom proceedings. Also, where the injured party initiates the complaint, the statute of limitations is significantly shorter than in those cases initiated by the prosecutor.³³ In any case, if the parties reconcile, the case is dismissed. These procedures place a significant burden on victims of domestic violence, which likely discourages many victims from pursuing their complaint through a trial.³⁴

In Romania, the police are charged with investigating only homicides and the most serious assault cases. During an interview with members of the Police Academy in Bucharest, the delegation learned that if the police are called on a domestic assault case, the common practice is to counsel or advise the couple at the scene of the assault.³⁵ The police may occasionally fine the abuser or require him to return the victim's property. Police do not, however, generally make arrests in these situations.³⁶

In any case, victims of domestic assault may be unlikely to enlist the services of the police, at least in Bucharest. One human rights advocate explained that some women are reluctant to call the police because of problems with police brutality.³⁷ She cited one case where a woman called the police after she was assaulted by her husband. The man was arrested and sentenced to thirty days in prison. While in prison, the man died. He is believed to have been beaten to death.

Other sources interviewed by the delegation reported that the police do not respond effectively to victims of domestic assault when they are called.³⁸ Police Academy professors

³³ Romanian Procedural Code Articles 279-285.

³⁴ For a discussion of prosecution procedures and how they affect victims of domestic violence, *see supra* note 2 at 38-44.

³⁵ The delegation met with eight professors at the Police Academy in Bucharest, *Academie de Police Alexandru Ioan Cuza*, on June 3, 1994. The Academy trains all law enforcement agents in the country, including border guards, patrol officers and firefighters. The students receive a law degree as well as law enforcement certification. The professors at the June 3 meeting were all men, most were over 55 years old and all retained their duties as police officers.

³⁶ These procedures, explained to the delegation by members of the Police Academy, were confirmed by lawyers and judges.

³⁷ Interview June 1, 1994.

³⁸ Doctors at the Emergency Hospital in Bucharest reported to the delegation that when police appear at the hospital in conjunction with a domestic assault, they arrive "with bored faces." *Supra* note 19. Maria Nader writes, "A social service for women and children beaten by husbands and fathers needs to be set up. Currently, beaten women and children have little recourse in justice, and the police usually remain aloof so far as family problems are concerned." Maria Nader, *Women in Post-communist Romania* in GAINS AND LOSSES: WOMEN IN TRANSITION IN EASTERN AND CENTRAL EUROPE 50-51 CEPES/UNESCO (1994).

interviewed by the delegation explained their opinion that domestic violence is not a problem in Romania. They ascribed this perception of domestic harmony to the "cult of the woman" in Romania. That is, they explained, that women in Romania are so loved by men, that they would do nothing to hurt them.³⁹ These police officers were unable to identify any particular law enforcement policy or strategy for addressing domestic violence. In contrast, an article in the journal of the police academy states that "an important segment" of criminal offenses are crimes of domestic violence.⁴⁰

If a victim of domestic assault decides to proceed with a criminal complaint, the victim must first go to a forensic hospital. There, doctors with legal training issue a "legal certificate" that documents the injury, the cause of the injury, and the number of days of medical treatment necessary for recovery. As noted above, the Romanian Criminal Code defines the severity level of an assault by the number of days the injury takes to heal. The delegation learned from members of both the medical and legal communities that doctors have discretion in certifying the medical treatment period and that there are circumstances where this discretion may be abused. Indeed, the number of days certified may not accurately reflect the actual healing time for the injury.⁴¹

After the legal certificate is issued, the victim may prepare a criminal complaint. After the complaint is filed, however, the complainant continues to be at risk of further violence. It is likely that the abuser will remain in the home during the proceedings and possibly even after the trial date, due to the serious housing shortage in Romania and the lack of shelters or any alternative living arrangements for victims of violence.⁴²

In addition, delays in the court system leave cases unresolved for weeks or even months, and victims of violence are left with no remedy or escape from an abuser. In Brasov, the delegation reviewed court files of cases filed in April 1994 with offense dates from February 1994. These cases were scheduled for trial the last week of May 1994. Judges and lawyers interviewed by the delegation reported that there are no pretrial appearances or in chambers conferences; the first court appearance is the trial date. Hence, over a month can pass before there is an initial

³⁹ *Supra* note 35.

⁴⁰ Alexandru Mircea writes that most victims do not report violence until its "extreme phases" and that the generally accepted beliefs that the man is the "master of the house" and that the home is inviolable contribute to domestic violence. *Supra* note 2, at 98-101.

⁴¹ A good example of this was a case filed in January 1994 in Brasov, where the medical treatment period certified by the doctor did not correspond to the injury at issue. The case file, reviewed by the delegation with the assistance of the presiding judge and a translator, involved a female victim assaulted by her male partner. The couple lived together throughout the proceedings. The victim suffered a broken leg from the assault at issue and a cast was required. The legal certificate classified the injury as requiring fourteen days of healing time for the victim. This case was a clear example of the legal certificate not reflecting the actual healing time required for a broken bone (which is longer than fourteen days) which might result in a lower sentence for the crime. When the delegation asked the judge about the discrepancy, he explained that the number of medical treatment days given certified by a doctor may be affected by what he or she views as mitigating circumstances, such as the victim's state of intoxication, whether the doctor feels the abuser was provoked, self-defense, etc.

⁴² *See* discussion, *supra*, p. 9.

appearance. During this period, orders for protection or other injunctive relief independent of the primary legal action (which are available in some jurisdictions) are not available in Romania. Trials generally do not finish on the day they are scheduled and the parties must return to court over a several week period before the case is completed. These delays and the inability to leave an abuser during the pendency of the proceedings subject victims of domestic violence to the risk of continued assaults.

If a victim of domestic assault successfully maneuvers through the forensic hospital and the court system and the abuser is found guilty, the victim's security may still remain at risk. Judges and lawyers interviewed by the delegation reported that sometimes the defendant is fined or ordered out of the home, but not always. If a perpetrator disobeys such a court order and returns to the home, the court may order that locks on the doors of the home be changed. It is often the case, however, that the victim and the perpetrator of the violence continue to live together.⁴³

In conclusion, though the Romanian criminal assault and battery statute provides adequate protection on its face for victims of domestic violence, enforcement of the law fails to protect victims. Victims must initiate and pursue their own criminal complaints against their abusers with no involvement from law enforcement officials or independent groups trained as advocates on their behalf. During the pendency of the proceedings, and even after the trial, the victim often continues to live with an abuser exposing her to further risk.

C. The Divorce Laws

The Romanian Parliament recently adopted a no-fault divorce law. Several judges and lawyers reported to the delegation that the no-fault divorce law has led to an increase in the number of divorces. On its face, this law has allowed greater freedom for individuals to escape domestic violence in marriage. However, even when a divorce is obtained, for many victims the violence does not end. Many victims obtain a divorce from their abuser only to find that they have nowhere to go.⁴⁴ Even after their divorces, many remain living with their former spouses and continue to be assaulted.⁴⁵

A domestic assault victim may be able to obtain a restraining order against the abuser. Such an order can only be obtained, however, as part of a divorce proceeding. Tying the

⁴³ The lack of any shelters or safe houses for victims of domestic violence was confirmed by every source interviewed by the delegation.

⁴⁴ As discussed at p. 10, the housing shortage presents a difficult hurdle for victims of domestic violence. One judge in Bucharest gave an account of a woman who had successfully obtained a divorce from a violent husband but had to continue living with his 18-year-old son. After the divorce, the woman's ex-husband continued to return to their home to beat her. This victim tried unsuccessfully to convince her neighbors (she lived in an apartment building) to support her story of abuse in a criminal action. The criminal action was not pursued.

⁴⁵ One Romanian judge offered her opinion that the new divorce law was not helpful to women seeking divorce from abusive husbands. She explained that judges will often literally divide the home as part of a divorce resolution. Under the former divorce law, where a showing of fault was required, evidence of violence often led the court to order the abusive husband out of the home completely rather than divide the home.

restraining order to the divorce petition makes it difficult for victims to provide for their own safety without also making a decision to divorce.

V. ROMANIA'S OBLIGATIONS UNDER INTERNATIONAL LAW

As a member of the United Nations, Romania is obligated to protect human rights. The provisions of the Universal Declaration of Human Rights and numerous other human rights instruments, such as the Declaration on the Elimination of Violence Against Women, define Romania's human rights obligations as a member of the international community. In addition, Romania has ratified the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women and is bound by the terms of these conventions.⁴⁶

The international norms described in these instruments condemn violence against women and domestic violence. The United Nations has recognized an affirmative obligation of member states to protect women from violence perpetrated by private persons and articulates specific responsibilities of governments to eradicate this violence.⁴⁷ The Minnesota Advocates delegation found that domestic violence is a pervasive problem in Romania which is virtually ignored by public officials. As one Romanian woman summarized the situation, "the public attitude about violence against women in general, about domestic violence in particular ... is at the best indifference, and at the worst mockery or blame for the victims."⁴⁸ The Romanian government's failure to respond appropriately to this situation is in direct opposition to international human rights standards.⁴⁹

A. Women are being denied the right to security of the person and freedom from torture and cruel and inhuman or degrading treatment.

The Universal Declaration of Human Rights includes several provisions relating to an individual's right to be free from violence and abuse. Article 3 provides that "everyone has the right to life, liberty and security of person." Article 5 provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁵⁰ The International Covenant

⁴⁶ Romania has established the supremacy of international law over Romanian law in its Constitution. The Romanian Constitution expressly provides that its provisions must be interpreted in conformity with international law and where it is inconsistent, international law supersedes Romanian law. Romanian Constitution, Article 20.

⁴⁷ See, e.g., Declaration on the Elimination of Violence Against Women, G.A. Resolution 48/104 (1993).

⁴⁸ Laura Grunberg, Director, Society for Feminist Analysis (ANA).

⁴⁹ For a detailed discussion of the concept of state responsibility to victims of domestic violence, see Katherine Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection from Domestic Violence in the Americas*, 34 Harv. Int'l. L.J. 507 (1993) and Dorothy Thomas and Michele Beasley, *Domestic Violence as a Human Rights Issue*, 15 Hum. Rts. Q. 36 (1993).

⁵⁰ G.A. Res. 217 A(III), December 10, 1948, U.N. Doc. A/810 (1948). These provisions are generally regarded to have the force of customary international law.

on Civil and Political Rights also provides that "every human being has the inherent right to life" (Article 6) and that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 7).⁵¹

Evidence from hospitals, doctors, legal professionals and others indicates that domestic abuse is both widespread and widely disregarded in Romania. Women in Romania are routinely subjected to this cruel, inhuman and degrading treatment. As a result, women are being denied the basic right to security of the person. By failing to protect women from private perpetrators of violence, Romania has failed to adhere to its obligations as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

B. Women are being denied an effective remedy for acts violating their fundamental human rights.

The Universal Declaration of Human Rights (Article 8)⁵² and the International Covenant on Civil and Political Rights (Article 2)⁵³ guarantee that states shall provide an effective and adequate remedy for acts violating fundamental rights guaranteed by constitution or by law.

As set forth in detail above, the Romanian legal system does not provide an adequate remedy for the denial of women's fundamental rights to security of the person and freedom from torture and cruel and inhuman treatment. These rights are not adequately protected at any step of the legal process. The police do not routinely arrest perpetrators of domestic assault, investigate complaints, or remove perpetrators from the home. Women are required to maneuver the criminal system alone and often find their own behavior scrutinized more closely than their abuser's behavior.

Even where a woman successfully pursues a complaint against her abuser, she is often still at risk of experiencing more violence. The courts rarely force a man who has assaulted his partner to leave the family home, and the housing shortage precludes many women from seeking alternative living arrangements. Women experience repeated acts of violence and find that the available legal remedies do not protect them from this violence. The failure of the legal system to adequately protect women from domestic violence and to effectively punish perpetrators violates the "adequate remedy" guarantee articulated in the International Covenant on Civil and Political Rights.

⁵¹ *Supra* note 5.

⁵² *Supra* note 4.

⁵³ *Supra* note 5

C. Romania is not in compliance with the Convention on the Elimination of All Forms of Discrimination Against Women and the Declaration on the Elimination of Violence Against Women

The Convention on the Elimination of All Forms of Discrimination against Women⁵⁴ forbids discrimination against women. The Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation 19 has explained that violence against women constitutes discrimination and ". . . seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."⁵⁵ General Recommendation 12 recommends that all parties to the Convention report to CEDAW on the existence of support services for victims of family violence, relevant legislation, statistical data and measures adopted to eradicate violence against women in the family.⁵⁶

The Declaration on the Elimination of Violence Against Women recognizes domestic violence as "a manifestation of historically unequal power relationships between men and women" and condemns the violence as one of the "crucial social mechanisms by which women are forced into a subordinate position compared with men." The Declaration includes explicit directions to member countries to "... not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination."⁵⁷ The Declaration sets forth specific steps a member state should take in combatting domestic violence. These steps include: investigating and punishing acts of domestic violence; developing comprehensive legal, political, administrative and cultural programs to prevent violence against women; providing training to law enforcement officials; and promoting research and collecting statistics relating to the prevalence of domestic violence.

Article 4(g) of the Declaration directs that states work to ensure that women subjected to violence and their children receive "specialized assistance, health and social services, facilities and programs as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation."⁵⁸

Romania fails to meet these standards. As discussed above, crimes of domestic assault are not adequately prosecuted and women are not provided adequate protection from further acts of violence. There are no domestic abuse advocacy programs in Romania to assist victims in filing complaints or in maneuvering through any part of the legal process. In addition, the delegation found no evidence of any effort to ensure that law enforcement officers and public officials responsible for investigating and punishing violence against women are receiving training to understand the unique and complicated issues involved in domestic assault.

⁵⁴ *Supra* note 6.

⁵⁵ U.N. Doc. A/47/38 (1992).

⁵⁶ U.N. Doc. A/44/38 (1989).

⁵⁷ G.A. Resolution 48/104 (1993).

⁵⁸ *Id.*

There are no government-sponsored prevention programs or programs to provide counselling or specialized mental health care to victims of domestic violence. There are no shelters or safe houses and no social programs to deal with the unique problems created by domestic violence. In addition, the government does not require the health care community in Romania to respond appropriately to victims of domestic abuse. There are no services available to victims of violence in Romania as called for by the Declaration on the Elimination of Violence Against Women and CEDAW General Recommendation 19.

VI. RECOMMENDATIONS

Based upon the findings of the delegation, Minnesota Advocates for Human Rights recommends:

1. The Romanian government should immediately comply with its obligations to protect victims of domestic violence in accordance with its obligations under Romanian law and international law. This includes preventing, investigating, and punishing acts of violence against women, whether those acts are perpetrated by the State or by private persons.
2. The Romanian government should ensure that women who are subjected to violence are provided with meaningful access to the mechanisms of justice and to just and effective remedies for the harm that they have suffered. This includes ensuring that women are informed of their rights to seek redress through such mechanisms.
3. The Romanian government should ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to inform them about the relevant laws and governmental policies and to sensitize them to the needs of women subjected to violence.
4. The Romanian government should also take measures to ensure that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, treatment and counseling, assistance in child care and maintenance, and other health and social services.
5. The Romanian government should strongly support the efforts of women's organizations and other non-governmental organizations actively working on the issue of violence against women and should cooperate with them at local, national, regional and international levels. This should include, among other activities, promoting research, collecting data and compiling statistics relating to the prevalence of different forms of violence against women.
6. The Romanian government should follow the guidance of the Declaration on the Elimination of Violence Against Women in all of its work toward the elimination of violence against women and the provision of services for victims of such violence.

EXHIBIT A

BUCHAREST FORENSIC HOSPITAL DATA *(Summary)*

During the period March 1993 through March 1994, 44.34% of all people who were treated at the Forensic Hospital were women between the ages 15 to 55. Of those women, 28.55% were beaten by an intimate partner. Of those beaten by an intimate partner, 87% were assaulted with a solid object (it was unclear whether that statistic includes hands or fists); 11% were assaulted with an object which pierced or cut the skin. Of those injured, 83% received a certificate categorizing their injuries for legal purposes in the "0-20 days medical treatment required" category. Seventy-five percent of the certificates sought were for evidence in divorce proceedings. In eighty-three percent of the cases where a woman was beaten by her intimate partner, it was at least the second assault. Fifty-nine percent of those seeking treatment for assault by an intimate partner reported that they had completed some school beyond high school, ten percent reported having a college, institute or university degree and thirty-one percent did not report their education level.

EXHIBIT B

SURVEY ON DOMESTIC VIOLENCE

This survey is sponsored by **Minnesota Advocates for Human Rights**, a nonprofit, nongovernmental organization based in the United States. Your complete survey is confidential and will not be released to the government.

Date: _____

Sex: M ___ F ___

Age: _____

1. Are you married? ___ divorced ___ single? ___
2. What is your occupation?
3. When you were living with your parents, how often did your father hit your mother?
Never ___ A few times ___ Many times ___
4. Do you personally know any women who have been hit by their husbands or partners?
Yes ___ No ___
5. How long ago did these assaults occur?
Within the last year ___ 2-3 years ago ___ More than three years ago ___
6. Do you personally know any women who have been hit by their spouse or partner while pregnant? Yes ___ No ___
7. Do you personally know any women who have needed medical treatment because their spouse or partner hit, stabbed or pushed them? Yes ___ No ___
8. How long ago did these assaults occur?
Within the last year ___ 2-3 years ago ___ More than three years ago ___
9. Has your spouse or partner ever hit, slapped or pushed you? Yes ___ No ___
If yes, on how many occasions? ___
10. Has your spouse or partner ever threatened you with a knife or any other weapon?
Yes ___ No ___ If yes, on how many occasions? ___
11. Has your spouse or partner ever stabbed or used another weapon on you? Yes ___ No ___
12. Have you ever required medical treatment after your spouse assaulted you? Yes ___ No ___
13. Have you ever missed work after your spouse or partner assaulted you? Yes ___ No ___

EXHIBIT C

SONDAJ CU PRIVIRE LA VIOLENTA DOMESTICA (Romanian version of the Survey)

Acest sondaj este sponsorizat de Avocatii pentru Drepturile Omului, din Minnesota, U.S.A., o organizatie nonprofit si neguvernamentala. Sondajul este confidential si nu va fi dezvaluit organelor guvernamentale.

Data: _____

Sex: M___F___

Varsta: _____

1. Sunteti casatorit? ___ divortat?___ necasatorit?___
2. Cu ce va ocupati?_____
3. Cand locuiati cu parintii, cat de des a lovit-o tatal dvs. pe mama dvs.?
Niciodata___ De cateva ori___ De multe ori___
4. Cunoasteti personal vreo femeie care a fost lovita de sot sau partener? Da___ Nu___
5. Cat de demult s-au intamplat aceste evenimente? Anul trecut___ Cu 2-3 ani in urma___
Cu mai multi ani in urma___
6. Cunoasteti personal vreo femeie care a fost lovita de sot/partener cand era gravida?
Da___ Nu___ Daca da, cate astfel de femei cunoasteti?___
7. Cunoasteti personal vreo femeie care a avut nevoie de tratament medical datorita faptului ca a fost lovita, injunghiata sau impinsa de sot/partener? Da___ Nu___
8. Cat de demult s-au intamplat aceste evenimente? Anul trecut___ Cu 2-3 ani in urma___
Cu mai multi ani in urma___
9. Sotul sau partenerul dvs. v-a lovit, impins sau palmuit vreodata?
Da___ Nu___ Daca da, de cate ori?___
10. Sotul/partenerul dvs. v-a amenintat vreodata cu un cutit sau o alta arma?
Da___ Nu___ Daca da, de cate ori?___
11. Sotul/partenerul dvs. v-a lovit cu cutitul sau a folosit o alta arma impotriva dvs.?
Da___ Nu___
12. Ati solicitat tratament medical dupa ce ati suferit violente din partea sotului/partenerului?
13. Ati lipsit de la locul de munca dupa violentele exercitate de sot/partener? Da___ Nu___