

THEORETICEL ASPECTS CONCERNING CRIMINAL OFFENCES COMIITTED AGAINST CHILDREN AND FAMILY. A COMPARATIVE STUDY OF ROMANIAN LEGISLATION AND HUNGARIAN LEGISLATION

R. D. VIDICAN

Vidican Roxana-Denisa

M.A. Student in Criminal and Forensic Sciences

Faculty of Law

E-mail: vidican.roxana@yahoo.com

Abstract

This article presents criminal offences committed against children and family in comparative terms, with their resemblances and differences, as provided by Title VIII – Criminal Offences That Bring Prejudice to Relationships of Social Cohabitation, Chapter II – Criminal Offences against Family of the Romanian Criminal Code, respectively Chapter XX – Offences against Children and against Family Law in the Hungarian Criminal Code.

Keywords: *criminal offence, family member, children, violence, intent*

Introduction

Both at national and international level, there are numerous concerns regarding the protection and support of family, the development and strengthening of family solidarity, based on friendship, affection and moral and material mutual help of family members so as to provide a climate of tranquility and harmony for optimal development of the minor child.

The family is one of the fundamental factors in the formation and development of human personality. Family relationships are regulated by moral and juridical rules that establish correlative rights and obligations among its members.

In this respect, both the Romanian Criminal Code and the Hungarian Criminal Code incriminate acts that bring prejudice to the fundamental values of minors and family.

1. Given the importance of family “as an institution and expression of the social value it represents”, its protection, strengthening and defence have represented a basic concern for all societies, because family supplies values such as human solidarity, meaning of existence, perpetuation of certain outlooks, moral and material solidarity, education and training of children in view of their normal integration into society¹.

The Hungarian Criminal Code, in Chapter XX, entitled Offences against Children and against Family Law, includes 8 sections that regulate the criminal offences committed against children and family, namely Abuse of a Minor in section 208, Child Labour in section 209, Preventing the Exercise of Visitation Rights in section 210, Changing of the Custody of a Minor in section 211, Non-support in section 212, Domestic Violence in section 212/A, Violation of Family Status in section 213 and Plural Marriage in section 214.

With regard to the same social values protected by criminal legislation, the Romanian Criminal Code provides criminal offences that are similar to those provided by the Hungarian Criminal Code, incriminating acts committed either against the minor or against a family member, in Chapter II entitled Criminal Offences against Family, of Title VIII entitled Criminal Offences That Bring Prejudice to Relationships of Social Cohabitation. Examples in

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M. Basarab, V. Pașca, Gh. Mateuț and collaborators, *Codul penal comentat (Criminal Code Annotated)*, Vol. II., Partea Specială (The Special Part), Editura Hamangiu (Hamangiu Publishing House), Bucharest, 2008, pp. 894-895

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this regard are supplied by Articles 376 Bigamy, 377 Incest, 378 Abandonment of Family, 379 Non-abidance by measures for child custody and 380 Preventing Access to General Compulsory Education.

In addition to these, other articles of the Romanian Criminal Code provide offences that are similar to those contained in the Hungarian Criminal Code. Thus, Title I entitled Criminal Offences against the Individual, Chapter III entitled Criminal Offences Committed against a Family Member, contains two articles, namely Article 199 Domestic Violence and Article 200 The Killing or Battery of the New-Born Committed by the Mother.

2. We will present as follows a few considerations regarding criminal offences against family, as provided by the Romanian Criminal Code and the Hungarian Criminal Code, analyzed comparatively.

Criminal offences against family are characterized by the fact that they have the same legal object, namely social relationships of cohabitation within the family.

As regards the subjects of criminal offences against family, there are also some aspects that are common to the two legislations. Thus, generally, the direct active subject (perpetrator) of these offences is a qualified person. As a rule, these crimes are committed by the person who has duties towards the family, not so much by persons who are not part of the family. Also, in terms of the passive subject of criminal offences against family, it usually is a person with a special status, i.e., persons who have certain rights within the family, rights that are violated through the criminal act².

As a rule, active and passive subjects are the object of circumstances given their status as family members. The Romanian Criminal Code defines the notion of “family member” in Article 177 as comprising: ancestors and descendents, brothers and sisters, the children thereof, as well as persons who have become through adoption, according to the law, such relatives, the spouse and persons who have established relations similar to those between spouses or between parents and children, if they live together. The Hungarian Criminal Code also defines the notion of “family member” in section 459 Definitions point 14 as: next of kin and his spouse or domestic partner, adoptive and foster parents (including resident stepparents), adopted and foster children (including resident stepchildren), siblings, spouses or registered partners of siblings, spouses and domestic partners, next of kin and siblings of spouses and domestic partners.

The material element of the objective side most often consists in actions, but there also are certain criminal offences whose material element presupposes both the existence of action and inaction, namely family abandonment (Article 378) and preventing access to general compulsory education (Article 380), regulated by the Romanian Criminal Code. In case of the criminal offence of non-support (Section 212) provided by the Hungarian Criminal Code, the material element consists in an inaction. Its immediate consequence consists in causing a state of danger for the social value protected by the incriminating text. The causality relationship results from the material character of the act³.

As regards the subjective side of criminal offences against family, there is also an aspect that is common to the two legislations, namely that they all require guilt in the form of intent, with both its types: direct and indirect.

In terms of the sanctions applied, the Romanian Criminal Code sanctions criminal offences against family by the penalty of imprisonment, within various limits, depending on the degree of social danger that the act poses, with the alternative sanction of fine, whereas

² V. Dongoroz and collaborators, *Explicații teoretice ale Codului penal român. Partea specială (Theoretical Explanations of the Criminal Romanian Code. The Special Part)*, vol. IV, 2nd Edition, Editura All Beck (All Beck Publishing House), Bucharest, 2003, pp. 492-493.

³ M. Udrouiu, *Fișe de drept penal. Partea specială (Criminal Law Sheets. The Special Part)*, Editura Universul Juridic (Universul Juridic Publishing House), Bucharest, 2012, p. 382

the sanction provided by the Hungarian Criminal Code is the penalty of imprisonment, within various limits.

According to the Romanian Criminal Code, criminal proceedings are initiated upon the preliminary complaint of the aggrieved party in the case of the crimes of family abandonment and non-compliance with the measures regarding the minor's custody⁴, and, according to the Hungarian Criminal Code, in the case of the crime of domestic violence.

Conclusions

As a result of this comparative analysis of criminal offences committed against children and family, both from the point of view of the Romanian legislator and that of the Hungarian legislator, I have realized the uttermost importance of and necessity to protect family, as one of the fundamental factors in the formation and development of society.

References

1. Matei Basarab, Viorel Pașca, Gheorghe Mateuș and collaborators, *Codul penal comentat (Criminal Code Annotated)*, vol. II., Partea Specială (The Special Part), Editura Hamangiu (Hamangiu Publishing House), Bucharest, 2008;
2. Mihail Udriou, *Fișe de drept penal. Partea specială (Criminal Law Sheets. The Special Part)*, Editura Universul Juridic (Universul Juridic Publishing House), Bucharest, 2012;
3. Tudorel Toader, *Drept penal român. Partea specială (Romanian Criminal Law. The Special Part)*, 7th Edition, revised and updated, Editura Hamangiu (Hamangiu Publishing House), Bucharest, 2012;
4. Vintilă Dongoroz and collaborators, *Explicații teoretice ale Codului penal român. Partea specială (Theoretical Explanations of the Criminal Romanian Code. The Special Part)*, vol. IV, 2nd Edition, Editura All Beck (All Beck Publishing House), Bucharest, 2003;
5. Romanian Criminal Code;
6. Hungarian Criminal Code.

⁴ T. Toader, *Drept penal român. Partea specială (Romanian Criminal Law. The Special Part)*, 7th Edition, revised and updated, Editura Hamangiu (Hamangiu Publishing House), Bucharest, 2012, p. 432