

DEFENDING FAMILY LAW VALUES VIA CRIMINAL LAW NORMS

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ABSTRACT

The economic and social challenges of the modern society necessarily imply the existence of a well-trained human resource, able to efficiently manage the various tasks related to the workplace, but also to efficiently cope with the evolution (revolution) of the informatics.

In this respect, at present, each European state seeks, through various specific policies, to develop a high social capital capable of successfully fulfilling these goals.

Thus, the protection of the family, as a matrix of the primary development of everyone, but also of the values related to it, has a primordial role in this context. The protection mechanisms are diverse, being regulated by both the rules of public and private law.

In the following we have proposed to review the criminal law norms that protect certain values of family law, such as the crime of abandoning the family (art. 378 Criminal Law), and the offense of preventing access to mandatory general education (art. 380 Criminal Law).

KEYWORDS: family, legal norms, education, crime.

INTRODUCTION

The feeling of tranquillity and trust conferred by the state institutions of the population regarding the application of measures to maintain public order and security, the safety of communities and goods as part of the concept of "public safety" must be reflected both at the macrosocial and microsocal level, i.e., at the level of the family.

Family protection is the subject of the concerns of all modern societies, which invest in human capital their entire arsenal of values.

In a plastic expression, I would say that the family is the cradle of human civilization. It constitutes the matrix in which every person is born, receives education and love, which is why its protection, including that of its members: spouses, children, and the values adjacent thereto: marriage, family life, its patrimony, children's education is important, and it must be ensured and guaranteed both by private law norms, such as those of family law, as well as by rules of public law, such as those of criminal law.

Lately, there has been an expansion of organized crime, illicit trafficking in drugs and human beings, including domestic violence, all of which have a major negative impact both on the person, viewed *ut singuli*, and on the microclimate which that person is a part of, in particular on the family.

In another context, it is noticed that the existence of a high social capital, able to generate added value in the society, implies children's and young people's better training with the State creating the necessary socio-economic conditions for the access to the mandatory general education, and later to the high school and higher education.

In relation to these premises, it is noted that in the Special Part of the current Criminal Law, in Chapter III of Title I, called Crimes against the person, the crimes committed against a family member are incriminated: domestic violence (art. 199 Criminal Law) and the killing or injury of the new-born committed by the mother (art. 200 Criminal Law). Also, separately from them, but related to them, the current Criminal Law incriminates in Title VIII called

Offences affecting relations regarding social cohabitation, under the name Offences against the family (Chapter II): bigamy (art. 376 Criminal Law), incest (art. 377 Criminal Law), family abandonment (art. 378 Criminal Law), non-observance of measures regarding the custody of the minor (art. 379 Criminal Law) and preventing access to mandatory general education (Art. 380 Criminal Law).

DELINEATION OF SOME CONCEPTS

The family is one of the most important values of a society. For this reason, his protection, and the values adjacent to it were in the attention of the legislator both under the family code, currently repealed, and of the Civil Code that entered into force in 2011, but also of the Criminal Law that entered into force in 2009.

The family is a basic social form, achieved through marriage, which unites the spouses (parents) and their descendants (unmarried children) (DEX, 2009). Etymologically, the term family comes from the Latin familia (-ae), which means the totality of members of a house or clan (Bodoaşcă, 2018, p.1).

The concept of the family is currently undergoing a real regress, due to some phenomena that have gained momentum recently: the multiplication of divorces, the abandonment of the perspective of marriage, the degradation of the condition of children and teenagers, etc.. This has attracted the attention of traditional churches. Thus, having as a premise the debate on how to use the term family in the Civil Code, the Orthodox Patriarchate Romanian declared the year 2014 "The Year of the Family" (Bob-Bocşan, 2020). Pope Francis also decided to proclaim a special pastoral year "Familia Amoris Laetitia " held from March 19, 2021, to June 26, 2022, the year in which the Catholic Church aims to promote spiritual, pastoral, and cultural initiatives to support families facing the current challenges (vaticannews.va).

First of all, the family, consists of the two spouses, that is, a man and a woman who have concluded the legal act of marriage under the conditions provided by law. The idea of union between a man and a woman for the purpose of procreation also constitutes the traditional significance of the institution of marriage. Thus, in the doctrine based on the Family Code, the concept of family was defined in various ways: the family is the main form of organization of the common life of people linked by marriage or kinship (Popescu, 1965, p. 17); the family designates the group of persons between whom there are rights and obligations arising from marriage, kinship, as well as from other relations assimilated to family relations (Ionaşcu, Costin, Ursa, 1975, p. 5; Filipescu, 2000, p. 2).

The meaning of the term family, as a union between two persons of different sex, is confirmed by the current legislation on family law in Romania, by the interpretation of constitutional norms in the field, but also by various other international documents. In this respect, the provisions of Article 259 para. (1)-(2) of the current Civil Code which establishes: "Marriage is the freely consented union between a man and a woman, concluded under the law.

Man and woman have the right to marry to establish a family."

In this context it should be noted that, although Art. 48 of the Constitution provides in par. (1) that: "The family is founded on the freely consented marriage between the spouses, on their equality and on the right and duty of the parents to ensure the upbringing, education and training of the children", without therefore explicitly referring to marriage between a man and a woman, by corroborating this text with the other constitutional provisions, it follows that any marriage involves partners of the opposite sex. The Constitutional Court, invested to rule on the constitutionality of these norms, provided that: "The constitutional protection of the family against any attempts to erode marriage, as a freely consented union between man and woman, for the purpose of establishing a family and procreating, is thus imposed as an

essential measure for the protection of the Romanian people, their identity and unity in the great European family" (Decision of the Constitutional Court no. 580 of July 20 2016).

The requirement for the two spouses to be of different sexes is also provided for by certain international regulations such as: Article 16(1) of the Universal Declaration of Human Rights or Article 23(2) of the International Covenant on Civil and Political Rights, Article 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which expressly stipulates the right of men and women to marry and thus to establish a family.

Secondly, by the family is understood the two spouses, that is, a man and a woman, as well as their children. With this significance we find the notion of family also in certain laws incident in the field, such as Law no. 273/2004 on the procedure of adoption and Law no. 277/2010 on family support allowance. Thus, art. 2 lett. j) of Law no. 273/2004 on the adoption procedure states that the family means parents and their dependent children; and art.2 of Law No 277/2010 on family support allowance provides that the family consists of husband, wife, and their dependent children who live together (par. (1)]; and the single parent family is the family formed by the single person and the children in that person's care and who live with the respective person (par. (2)]. Also, according to par. (3) of Article 2, the family shall be considered within the meaning of the rules of par. (1) also the relation the unmarried man and woman, with their children and those of each of them, who live and share the household, if this is recorded in the social survey.

In defining the family, however, one cannot ignore the realities existing in the present society in which many couples choose to live together in cohabitation or to procreate without having the status of married persons.

It is also noted that in recent years, several European states, such as Belgium, Denmark, Finland, France, Germany, Ireland, Malta, the United Kingdom (except for Northern Ireland), Spain, and the Netherlands, have proceeded to legalise same-sex marriages (L. Irinescu, 2020).

However, the considerations mentioned above cannot interfere with the idea that, as a rule, marriage is the foundation of a family.

The importance of the family as a social value is also highlighted by the significant protection granted to family life through various domestic and international regulations. Thus, at national level, the constitutional provisions that provide in par. (1)-(2) of article 26 called "Intimate, family and private life" that: "Public authorities respect and protect intimate, family and private life.

The natural person has the right to dispose of himself or herself, if he/ she does not violate the rights and freedoms of others, public order or morals. "

We appreciate in this context that the text of par. (1) of Article 26 may be amended to emphasize more strongly the involvement of the State in the protection of intimate, family, and private life, as we propose that it provides that the public authorities guarantee respect for and protection of those values.

At international level, in the Charter of Fundamental Rights of the European Union (2000), article 7 provides that: "Everyone has the right to respect for private and family life,...", a provision which is also found in article 12 of the Universal Declaration of Human Rights (1948), art. 8 par. (1) The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and in the International Covenant on Civil and Political Rights (1966) (Article 23 par. (1)] .

Relative to children, ECHR case-law about the family life enshrines interdependent rights, such as the child's right to family life and the child's right that his or her best interests take precedence over. It is noted, however, that the child's right to respect for family life may be limited in order to guarantee his or her best interests (European Union and Council of Europe Agency for Fundamental Rights, 2015, p.76).

Therefore, family life can be considered a complex phrase that includes the totality of the relationships that arise between the members of a family, but also the set of rights arising

from these relationships, such as: the right to support, education, vocational training, physical health, etc.

According to the EU legislation, as well as the legislation of the Council of Europe, the right to respect for family life is not absolute but is subject to limitations. In this respect, in accordance with Article 8 par. (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, the interference of a public authority in the exercise of this right is permitted only if such interference is provided for by law and constitutes a measure which is required for national security, public safety, economic well-being of the country, the protection of order and prevention of criminal acts, the protection of health or morals, or the protection of the rights and freedoms of others in a democratic society.

Thus, the growth of high social capital involves the education of any person, through education aiming at the free, integral, and harmonious development of human individuality, in shaping the autonomous personality and undertaking of a system of values that are required for personal fulfilment and development, for the development of the entrepreneurial spirit, for the active citizen's participation in society, for social inclusion and for employment on the labour market.

The right to education is consecrated both through international regulations and through internal normative acts.

At national level, this right is regulated by the norms of constitutional law, but also by those of the Law on National Education No. 1 of 2011.

Art. 48 of the Romanian Constitution confers on parents the right, but also the duty to ensure the upbringing, education and training of children, the family environment being the most conducive to the child to learn the first rules of conduct and learning.

In the fundamental law the right to education is enshrined in art. 32: "The right to education is ensured through mandatory general education, high-school and vocational education, higher education, as well as other forms of training and improvement (Morosțeș, 2020, p. 56). Education of all grades is carried out in Romanian. According to the law, education can also be carried out in an international language." [par. (1) -(2)]. It is noted that people belonging to national minorities are guaranteed the right to learn in their mother tongue, but also the right to be able to be trained in this language [par. (3)].

To ensure the access of the entire population of school age to education, it is ordered that the state education is free of charge, according to the law; also, for children and young people coming from disadvantaged families and institutionalized, the state grants social scholarships, according to the law [art. 48 par. (4) of the Constitution].

The legal basis for exercising the right to education is created at national level by the Law on National Education no. 1 of 2011, which provides the framework for the exercise under the authority of the Romanian state of the fundamental right to lifelong learning, and, at the same time, it regulates the structure, functions, organization and functioning of the national education system (art.1).

The main purpose of the education and professional training of children, young people and adults is to form the necessary skills, according to art. 2 of the reviewed law, in order to achieve certain desiderata, such as: personal fulfilment and development, by achieving their own objectives in life, according to the interests and aspirations of each and the desire to learn throughout life; social integration and active citizen participation in society; employment and participation in the functioning and development of a sustainable economy and education in the spirit of dignity, tolerance and respect for human rights and fundamental freedoms;

At international level, the child's right to education is foreseen since 1959, the year in which, on November 20, the U.N. General Assembly passes the Declaration of the Rights of the Child, which establishes the right of the child to free and mandatory education at an elementary level, conferring this responsibility primarily on parents.

Convention on the Rights of the Child, passed by the U.N. General Assembly, on November 20, 1989, ratified by Romania in 1990, stipulates in Articles 28 and 29, the

child's right to education. Thus, art.28 recognises the right of the child to education and, inter alia, to make primary education public and free of charge for all; to establish free education and the granting of financial assistance in case of need, etc.

In European Union law, Article 14 of the EU Charter of Fundamental Rights guarantees the right of any person to education, but also to access to vocational training and continuing education. The right to education includes "the possibility to attend mandatory education free of charge". The third line of the same legal text enshrines the right of parents to ensure the education and training of their children, according to their own religious, philosophical, and pedagogical beliefs.

In the law of the Council of Europe, Article 2 of Protocol No 2. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to education. The ECHR states that it does not oblige the State to make education services available but guarantees "the right of access to educational institutions existing at a given time" (European Union Agency for Fundamental Rights and the Council of Europe, 2015, p. 145). However, this right is not absolute, but its limitations, e.g., suspension or expelling from an educational institution must be carried out under the conditions and with the procedure provided by the legal provisions.

In this respect, in the ECHR case-law it was decided that the forced closure of schools taught in the Moldovan language (which use the Latin alphabet), and the subsequent harassment of children on the way to these schools constituted an unjustified interference with the children's right to education, thus causing a violation of Article 2d of Protocol No. 1 to the Convention for the protection of human rights and fundamental freedoms (ECHR, Catan and others/Moldova and Russia [GC], 2012).

1. THE OFFENCE OF FAMILY ABANDONMENT

As mentioned above, the current Criminal Law dedicates to crimes against the family the Chapter II of Title VIII of the Special Part.

The special legal object of the crimes against the family is represented by the social relations whose existence is determined by the defence of the family, as an institution, but also as a social value, which also determined their inclusion in Title VIII called Crimes that affect some relations regarding the social cohabitation.

Given the special impact that the acts incriminated by this crime produce on the family, we have chosen to analyse the crime of family abandonment, regulated by art. 378 of the Criminal Law.

In the regulation of the current Criminal Law, the offence of family abandonment takes the form of a standard version and of an assimilated variant. The standard version can be committed by the person who has the legal obligation to support, in relation to the one entitled to receive support, in several ways:

- leaving, banishing, or leaving without help, exposing him to physical or moral suffering;
- failure to comply, in bad faith, with the support obligation provided by law;
- non-payment, in bad faith, for 3 months, of the alimony established by the court.

The assimilated version is committed by the non-execution, in bad faith, by the convicted person of the regular benefits established by a court decision, in favour of the persons who are entitled to receive support from the victim of the crime (art. 378 par. (2) Criminal Law).

The special legal object of this crime is the social relations that concern the legal support obligation under which the family members owe support to them, but also moral and material support (Ristea, vol. II, 2020, p. 427).

The obligation for support is materialized through mutual aid activities between the members of a family and relies on the feelings of human solidarity and affection, which develop in a family.

The performance of this obligation involves a concrete support, consisting in providing the living means to one of the members of the family who is in need (Popescu, 1965, p. 197; Boroi, 2014, p. 701)..

The provisions of the current Civil Code stipulate the rule that the person who is in need enjoys the right to support, due to the fact that he cannot support himself from his work or from his assets (art. 524). However, the provisions of art. 527 par. (2) of the same normative act which establishes that only the person who has the means to pay for it or has the possibility to acquire those means may be obliged to it.

As such, in a particular situation, the existence and extent of the support obligation (Berlingher, vol. I, 2014, pp. 199-201) implies, as sine qua non requirements, the state of need of the creditor, respectively the means necessary for the granting of support by the debtor (Florian, 2011, p. 258).

It is noted, however, that the effects of the support obligation are established by kinship, marriage, or by those assimilated to family relationships. In this respect, the law-maker specifies in art. 516 et seq. of the Civil Code who are the persons between whom the support is due, respectively: between husband and wife, relatives in a straight line, between brothers and sisters, but also between the other persons specifically provided by law, as well as between the former spouses, if the legal requirements are met. Subjects of the support obligation are also the spouse that has contributed to the upbringing of the other spouse's child, who is obliged to support the child, for as long as the child is underaged, in the conditions in which the child's natural parents have died, are missing or are in need. Correlatively, the child may also be obliged to perform the support obligation towards the person who upbrought it in this way for a period of 10 years.

The material object is those goods which the person entitled to receive support was deprived of, such as: shelter, food, clothing, etc.

As for the *subjects of the crime*, it is noticed that the qualified active subject of the crime of family abandonment is the person who has the legal obligation to support it.

In the situation referred to in par. (1) letter c) of Article 378 Criminal Law, the deed is committed only by the person who, incumbent on him/ her with such an obligation, must pay support to another person, following the ruling of a court decision.

It is noted, however, that in the assimilated version, the active subject is that person sentenced by a court decision to pay periodic benefits to the persons who are entitled to receive support from the victim of the crime. The legal text thus refers to the perpetrator of a crime directed against the person (e.g., murder, manslaughter, but also outrage, etc.).

Within the analysed crime, criminal participation is also possible, in the form of instigation and complicity (Ristea, vol. II, 2020, p. 428).

The passive subject of the crime is the person who is entitled to receive support from the active subject, as provided law.

Constituent content

The material element of the objective side consists of certain actions or inactions, such as: leaving, banishing, or leaving without help the person entitled to support (Art. 378 par. (1) letter a) Criminal Law].

Leaving is that action that refers to the departure of the perpetrator from the place where the person entitled to support is found without providing him/ her with the necessary living means, exposing that person to hunger, cold, etc.

Banishment implies the action of removal by the perpetrator of the person entitled to support from his home or from the place where they are temporarily set and where the support obligation is exercised (Ionaș, Măgureanu, Dinu, 2015, p. 618).

Leaving without help designates a statement on the part of the perpetrator, for example leaving the person entitled to support without treatment.

The existence of the material element of the objective side in the cases referred to in letter a) of par. (1) Art. 378 Criminal Law involves exposing the entitled person to physical or moral suffering.

Another incriminated inaction is the non-performance in bad faith of the support obligation provided for by law (art. 378 para. (1) letter b) Criminal Law].

In the specialized literature it was stated that only the person in need was entitled to support, as a result of the impossibility of a gain from work due to the inability to work or who does not have other income (Boroi, 2014, p. 703).

According to para. (1) letter c), another way of achieving the material element of the analysed crime envisages the non-payment, in bad faith, for 3 months of the alimony established by the court.

As regards the date from which the 3-month period runs, we note that H.C.C.J. was seized with a preliminary ruling for the untying of the question of law regarding the clarification of the meaning of the expression "committing the act", stipulated by the provisions of art. 296 of the Code of Criminal Procedure Law (relevant for the calculation of the deadline for submitting the preliminary complaint), in the sense of establishing whether this means the date of cessation of the inaction (the date of exhaustion of the offence of family abandonment) or the date of consumption of the crime (expiry of the 3-month period during which the perpetrator remained in passivity). In this regard, the supreme court ruled that: "In the case of the offence of abandonment of the family provided for in article 378 para. (1) letter c) of the Criminal Law, the term of submission of the prior complaint provided for in the content of Art. 296 par. (1) and (2) of the Code of Criminal Procedure Law - 3 months from the day when the harmed person or that person's legal representative learned about the act doing - shall run from the date on which the harmed person or that person's legal representative knew about the deed doing." (High Court of Cassation and Justice - The panel for resolving legal issues in criminal matters, Decision no. 2 of January 20, 2020)

In the assimilated version, the material element takes the form of non-execution, in bad faith, by the person sentenced to the payment of periodic benefits ordered by court decision, in favour of persons entitled to support on behalf of the victim of the crime. Thus, in this variant, it is about committing a crime against a person who has the obligation to support, and as a consequence of this crime, that person can no longer fulfil his/ her duties (for example, in the event of loss of the capacity to work).

We agree to the opinion expressed in the doctrine (Ionaş, Măgureanu, Dinu, 2015, p. 619) that the obligation deriving from a support contract does not refer to the support obligation provided by the text of art. 378 Criminal Law.

The actions or inactions by which the offence of family abandonment is committed have as an *immediate consequence* the creation of a state of danger with regard to family relations, in the sense that the lack of support to which the person whom the obligation to support is entitled to may affect that person's physical, mental development or survival.

In this context, it is noticed that the existence of the analysed crime necessarily implies a *causal link* between the incriminated action or inaction and the result produced.

Regarding the subjective side, the family abandonment is committed with direct or indirect intention in the case of the modalities regulated by Article 378 par. (1) letter a) Criminal Law, respectively by an omission in bad faith, in the case of the modalities established by art. 378 par. (1) letters b) and c) Criminal Law (Boroi, 2014, p. 704).

It was stated in the doctrine that there is no bad faith in the situation in which the person obliged to pay the support pension, although not paying, lived during that period with the mother of the child and with him/ her and took care of the minor, assuring him/ her the necessary means for living (Dobrinoiu, Conea, 2000, p. 466).

Regarding *the sanctioning* of this crime, it is noted that it is punished by imprisonment from 6 months to 3 years or by a fine in the ways provided by the standard version and in the assimilated variant.

With regard to the offence of family abandonment committed by the defendant's failure to pay, in bad faith, the support pension to the injured person (in this case his minor son), it was decided in the judicial practice that, starting from the premise that the defendant was previously sentenced to a prison sentence of 1 year, in respect of which the conditional suspension of execution for a period of 3 years was ordered, what was a trial term, the penalty of the fine is not sufficient to achieve the preventive, educational and sanctioning purpose of the punishment, which is why it sentences the defendant to the punishment of 1 year and 6 months imprisonment, also revokes the benefit of the conditional suspension of the execution of the sentence of 1 an prison, and orders the full execution of this sentence along with the punishment applied by this sentence, the defendant having to execute the sentence of 2 years and 6 months imprisonment (Săveni Court, Criminal Sentence no. 47/03.02.2020).

Criminal proceedings are set in motion to the prior dismissal of the injured person.

We note that the attempt is not punished, although it is possible in case of leaving, banishing, or leaving without help.

Also, the capacity is not sanctioned if the defendant fulfils his obligations before the end of the criminal investigation ((Tulcea Court, Criminal Sentence 930/15.06.2017).

At the same time, if, until the final decision of conviction, the defendant fulfils his obligations, the court may order, as the case may be, either the postponement of the application of the sentence or the suspension of the execution of the sentence under supervision, even when the conditions established by law for it are not met (art. 378 par. (5) Criminal Law].

2. THE OFFENCE OF PREVENTING ACCESS TO MANDATORY GENERAL EDUCATION

Another crime that produces serious consequences on the future of the minor is the offense of preventing access to mandatory general education, regulated by art. 380 of the current Criminal Law.

This offence is established by the provisions of the Criminal Law that entered into force in 2009, as it had no counterpart in the previous legislation. The criminalization of this act is due to the alarming increase in the school dropout rate by students of increasingly younger age, as stated in the explanatory memorandum of the new Criminal Law.

The incriminating text does not refer to situations in which this abandonment is caused by a precarious material situation, a hypothesis in which the state has the obligation to intervene through other legal levers, but those situations in which the parent abusively proceeds to withdraw the minor from studies or prevents him from following them, although he would have had all the conditions for this (I. Ristea, 2020, p. 437).

The child's right to education is regulated, as we indicated above, both by the provisions of the Constitution (art. 32, art. 48), the Law on National Education 1/2011, but also by the norms of Law no. 272/2004 on the protection and promotion of the rights of the child, which in art. 47 par. (2) has the obligation of parents to provide children with the necessary conditions for growth, education, education, and vocational training.

The reviewed crime looks like a type of variant.

In this regard, the crime is committed by the parent or the person to whom a minor has been entrusted with, according to the legal norms, and who, unjustifiably, proceeds to withdraw or prevents him by any means from attending the courses of mandatory general education.

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The special legal object in the case of the crime of preventing access to mandatory general education is the social relations that consider the protection of the upbringing and education of minors and their access to mandatory general education.

Under the Law on National Education no. 1/2011, art. 24 par. (1), as amended by Law no. 56/2019, general education includes: primary education, secondary education and the first two years of higher secondary education.

It is noticed that this crime is devoid of *material object*.

Regarding the *subjects of the crime*, it is inferred from the legal norms that the active subject is qualified, being the parent or that person to whom the minor was entrusted for upbringing and education.

The criminal participation may be encountered in the form of instigation or complicity (Dobrinouiu, Neagu, 2014, p. 721).

The main passive subject is the state, as the holder of the social values protected by the Criminal Law, and the secondary passive subject is the minor who is violated the right enshrined in the constitutional provisions to the mandatory general education.

Constituent content

The material element of the objective side consists in the action of withdrawal or the action/inaction to prevent the minor, committed by the parent, by any means, to follow the mandatory general education.

The removal of the minor means the removal, abandonment, quitting to attend the courses of the mandatory general education, as a consequence of the decision adopted in this regard by his/her parent or the person whom the minor was entrusted to, according to the law.

Preventing the minor from attending the courses of mandatory general education means his/her interdiction to attend the courses, by means such as: not enrolling him/her at a school or sending him/her to a locality where there is no education institution (Dobrinouiu, Neagu, 2014, p. 722).

The immediate consequence is to create a state of danger for the development and education of the minor.

The causal relationship requires the existence of a causal link between the incriminated action and the result produced.

The subjective side can manifest itself in the form of direct or indirect intention, the fault being excluded.

As forms, it is noticed that the acts of preparation and the attempt are not sanctioned, and the offense is consumed by withdrawing or preventing the minor from attending the mandatory general education (Ristea, 2020, p. 440).

The offence of preventing access to mandatory general education is *punishable* by the rules of the Criminal Law with imprisonment from 3 months to a year or by a fine.

Regarding the initiation of criminal proceedings in the case of this crime, distinct opinions have been expressed in the doctrine. Thus, certain authors consider that criminal proceedings are set in motion *ex officio* (Dobrinouiu, Neagu, 2014, p. 723; Ionaş, Măgureanu, Dinu, 2015, p. 626), and others consider that it is set in motion only at the preliminary complaint (Ristea, 2020, p. 440). Considering that art. 380 of the current Criminal Law does not regulate the preliminary complaint and also the importance of the value protected by the incrimination norm, namely the minors right to education and their access to mandatory general education, we agree to the opinion that criminal proceedings are set in motion *ex officio*.

The jurisdiction to judge this offence at first instance belongs to the court of law [art. 35 par. (1) Criminal Procedure Law].

The criminal norms provide for a special cause of non-punishment of the deed, respectively if, before the end of the criminal investigation, the defendant ensures the resumption of attendance of courses by the minor (art. 380 par. (2) Criminal Law)].

In addition, as a special cause of individualization of the punishment, par. (3) of Article 380 Criminal Law states that the court rules, as the case may be, to postpone the application of the sentence or to suspend the execution of the sentence under supervision, even if the conditions established by the legal provisions for it are not met, in the event that, until the final decision of conviction, the defendant ensures the resumption of attendance of courses by the minor.

CONCLUSIONS

Paraphrasing the memorable speech of the illustrious Romanian diplomat and jurist Nicolae Titulescu held in 1937 in Bratislava on the occasion of receiving the title of Doctor *Honoris Causa*, we appreciate that, at almost 100 years after its utterance, it keeps its actuality, because indeed, only then when the law shines, just as the sun illuminates the soul of men, as a guiding spirit, as a self-imposed obligation, as a self-censorship that identifies with organized freedom, only then will mankind be safe, because the human being will be able to fulfil its destiny in the peace established by the legal order.

In the current context, dominated by economic and social insecurity as a result of the Covid19 pandemic, it is needed to provide the state institutions with a special protection of the family.

The protection of the family and of the values adjacent to it is a desideratum that is part of the sphere of interest of both private and public law. The state, through its mechanisms, must create a proper legal framework that ensures the harmonious development of the family life of the natural person, regardless of the way in which he wants to configure it.

On the other hand, in the current situation, characterised by the tendency to reconfigure family relations as a result of the choice of many couples to live in cohabitation, of the registered partnerships recognised by many European states, of the legalisation in many European countries of same-sex marriages, it remains to be seen to what extent the current framework of the traditional family can be preserved.

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