

FORENSIC ISSUES IN FAMILY ABANDON OFFENCE INVESTIGATION

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Abstract

Family is community foundation, thus contributing to a very well-structured society able to ensure a healthy and safe environment in which any family can promote its members welfare, without excluding support that herself deserves from its own society. Considering the crucial role of family in any society, being inextricably linked to its function or dysfunction, due to time it felt the need to strengthen family relationships through a better legislation in the area, which has been concretized in incriminating acts likely to affect the social relations that protect it. With this respect, we particularly pay attention to determining the nature of crime and assessing its effects, for an appropriate qualification of the act as a criminal act or just as a contravention. It is also required a content decryption of incrimination and also a clarification of all existing and questioned controversies in practice and in juridical literature. Forensic methodology is based on researching normative ways of committing this crime, with a special focus on factual arrangements in aggravated forms, although there is no legal provision in this sense. The investigation search engine highlights criminal field lines, reflecting the whole family picture in which the perpetrator is conducted, taking into account his psychological attitude of his actions.

Keywords: *family relationships, welfare, abandon, offence, investigation*

Introduction

The Romanian lawmaker has given particular importance to the regulating of family relations, most of the times instituting through legal norms of imperative nature, both the personal and patrimonial duties that exist between spouses and the relations between parents and children. Without stating that one of these duties is more important than another, the study before you focuses on the fulfilling of these duties, necessary for the family members to coexist in a quiet environment or, in any case, bearing the costs of supporting them financially. As the family is the basis of society, an analysis of the relations within it is especially important owing to the fact that preserving the family can only be an advantage for any society.

From this point of view, the law must find the necessary solutions in order that the behaviour of a family member does not harm the integrity of the others, in case one fails to do one's lawful duties adequately. According to Romanian law, the act of abandonment is a non-violent offence, and investigating it is much more complex, difficult and needing more attention.

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This is the reason why this study analyses the subject of the offence, the forms of culpability, the ill will (decisive in this case), as well as a series of controversial elements concerning the subject in question. This paper presents an analysis of penal doctrine, with the mention that this offence is not widely found in this particular doctrine. This is in fact the reason why this subject is analysed in the present interdisciplinary study.

1. The Need to Institute a Well Structured Legal Framework to Ensure the Efficient Protection of Family Values

Many international documents³⁹ have brought the family into discussion, the family as “a natural and fundamental element of society” with the right to the protection of the state and society⁴⁰. A particularly important problem is that of respecting family life in domestic law. In this sense, it has also been stated that a certain respect owed to the individual must be guaranteed, because he holds certain prerogatives, which permit him to demand respect for his private and family life⁴¹. By the same token, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state”, and the fact that “Every minor child has the right to the measures of protection required by his condition as a minor on the part of the family, society and the state”⁴² is also mentioned. Taking all these things into consideration, it becomes clear that the family has always been and will continue to be the key unit of all human societies⁴³, and any disintegration of it will lead in itself to a destruction of social life.

For our part, we consider that there should be a consciousness in every one of us. This could help us understand each other better, with all our needs and therefore understand our limits as well as our duties, in full accordance with society’s requirements. It has been said⁴⁴, for good reason that the determinant factors, which limits man’s capacity to suppress his violent impulses, are the economic and social conditions. In this sense, it was intended to find out how far the authorities should be involved when situations arise that could harm these social values, and further attention must be paid to the study of this phenomenon, in order to identify its causes and the methods to prevent them.

The family is considered of crucial social value in our society and all actions that could harm it represent a serious social peril for our protected values, a fact that requires the distinct regulation of these offences, within a well structured legal system. The legal ground for incrimination is that abandonment goes against the most basic feeling of solidarity and mutual aid that all family members owe one another, and thus this act is punished by the penal law⁴⁵.

2. Interpreting the Legal Text. Identifying the Factual Causation

A series of discussions have appeared in specialized literature⁴⁶ that aim to clarify the factual causation that could arise, depending on the different concrete data of every cause

³⁹ R. Șerbănescu et al., *Principalele instrumente internaționale privind drepturile omului la care România este parte*, Vol. 1 *Instrumente internaționale*, 8th edition revised (București: Ed. I.R.D.O., 2006).

⁴⁰ F. Sudre, *Drept european și internațional al drepturilor omului* (translated) (Iași: Ed. Polirom, 2006), 312.

⁴¹ C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole*, vol. 1, *Drepturi și libertăți*, (București: Ed. All Beck, 2005), 593.

⁴² Articles 17, 19 from the *American Convention on Human Rights* (ACHR), on the 22nd November 1969.

⁴³ Al. Boroș, *Infrațiuni contra unor relații de conviețuire socială* (București: Ed. All Beck, 1998), 18.

⁴⁴ D. Voinea and V. Lăpăduși, *Considerații privind faptele comise cu violență de-a lungul timpului*, published in the volume *The International Symposium for Criminal Investigation of Crimes of Violence*, organized by the Romanian Criminology Association and the General Inspectorate of the Romanian Police (the 4th-5th Nov. 2008), (Bucharest, 2009), 9.

⁴⁵ V. Dongoroz et al., *Explicații teoretice ale codului penal al RSR*, vol. IV (București: Ed. Academiei RSR, 1972), 508.

⁴⁶ V. Dongoroz et al., *Explicații teoretice ale Codului penal român*, vol. III, *Partea Specială* (București: Editura Academiei Române, 1971), 573; V. Dongoroz et al., *Explicațiile teoretice ale Codului penal român*, vol. IV, second edition (București: Editura All Beck, 2003), 512.

separately, aspects that should be carefully considered in individualizing the punishment. By this token, even though the law's text stipulates that the act of abandonment has only simple modalities, there are more aggravated forms of it, such as, in the situation in which among the people left helpless there are more children, a situation in which the person indebted to sustain them is ill or the situation in which the perpetrator keeps changing his residence for the clear purpose of evading his legal obligations. Thus, the legal provisions are to be carefully interpreted, as the police have the task of carefully enforcing these in concrete, actual situations, which are mostly aggravated forms of abandonment, the more so as when it concerns an either way offence⁴⁷, wherein each of the ways in which the offence was committed is separately considered as it can characterize the offence⁴⁸.

Taking into consideration the multitude of factual ways in which an offence of abandonment can be committed, we are going to try to outline the particulars of investigating it, and we mention that is by this very investigation we obtain many of the indications referring to the causes and effects of such actions.

3. The Main Issues – the Object of Probation – That Must Be Clarified During the Criminal Investigation. Legally Classifying the Act of Abandonment – Offence or Minor Offence?

In order to sort out the main issues referring to the illegal activity, it is paramount to establish whether the action consisted in driving away, abandoning or leaving without help people who are entitled to support, or consisted in not fulfilling in ill will the obligation of support as stipulated by law, or in the action of not paying in ill will, for two months, of the support money as decided on by the court of justice. We must also mention that, in all the aforementioned cases, there is a need to establish, *in concreto*, who are the persons entitled to support and which is the fact that confers them this right.

Speaking for our part, we consider it crucially necessary to clarify all problems connected to the perpetration of the offence of abandonment, since⁴⁹ many cases investigated by the authorities were based on unfounded complaints, made with the sole purpose of bringing the person that had left the marital home back to the family, by pressuring that person, although they fulfilled their obligation of support or those abandoned were not the victims of physical and emotional abuse or they are not even in need of support. The ill will, with which the perpetrator acts is the very basis of the incrimination for this offence and the existence of the offence is registered even when the perpetrator remains passive, by leaving the entitled party without the necessary support.

It is relevant to this that the criminal investigation to ascertain whether the abandoned party was or was not exposed to physical or emotional abuse, whether such abuse had been inflicted on them or is about to and what did it consist in. We also add that the need to establish the consequences of this action is great, in order to classify it as either the offence of abandonment or as a simple offence⁵⁰, by throwing out of the family home of the spouse, the children and any other person entitled to support. Being exposed to physical or mental abuse is a condition *sine-qua-non* to document abandonment, meaning that if the person entitled to alimony was not exposed to such

⁴⁷ V. Dobrinioiu and N. Conea, *Drept penal. Partea specială. Teorie și practică juridică* (București: Ed. Lumina Lex, 2002), 474.

⁴⁸ T. Vasilescu et al., *Codul penal al RSR, comentat și asnotat – Partea Specială*, vol. II (București: Editura Științifică și Enciclopedică, 1977), 380.

⁴⁹ I. Cora et al., *Curs de criminalistică*, vol. III, *Metodică criminalistică*, Partea a III-a, Ministerul de Interne (București, 1977), 21.

⁵⁰ Law nr. 61 from the 27th of October 1991 to punish the acts of offending the rules of social life, order and public peace, published in the Official Monitor nr. 196 (from 27/Sep/1991, art. 2. letter ș)

abuse, then the action does not constitute an offence⁵¹. Therefore, there is no offence of abandonment in the situation, in which the mother abandons the family home, and the underage children remain under the care of the employed father and other two children, who are over 18 years old and have their own incomes⁵². When using the phrase “exposing to physical and mental abuse”, it must be understood in the sense of maximum probability of the abuse being suffered or to suggest without a doubt that it could be so, and therefore it is not absolutely necessary for it to have already happened⁵³. Had the lawmaker the actual suffering of the abuse, he would then have used the phrase “producing physical and mental abuse”.

Therefore, it is absolutely necessary that all offences of the law have as a consequence the injury of a person and physical and emotional suffering, *per a contrario*, the offence of abandonment is not documented if the particular actions and inactions did not expose the party entitled to alimony to physical and emotional suffering⁵⁴.

Regarding the second legal variant stipulated by the text of the law for committing this offence, namely when the act consists in *not fulfilling the obligation to pay alimony*, any criminal investigation must establish to what extent the entitled party is in need of support, given that this situation represents the condition *sine-qua-non* for documenting the offence of abandonment done in this way⁵⁵. It is not required that the party entitled to alimony be exposed to physical and emotional abuse, but only that the perpetrator commit the offence in ill will⁵⁶. There is therefore ill will if the perpetrator, although capable of work, systematically refuses to become employed in order to obtain the necessary income to fulfill his family duties⁵⁷. Thus, the meaning of *obligation to support*, the which the text of the second variant of constituting a material argument makes reference to, is not that of a sum of money in the form of a pension, rather material and moral support given by a person as obliged by the law⁵⁸. Thus, the obligation to support must be understood as providing what is necessary in daily life – food, clothing, medicine – without which family life and the relations between its members is inconceivable⁵⁹.

Considering the nature of this obligation to support, it can appear directly in the law, as in the situation of parents responsible for feeding and clothing their children, but it can be instituted by a judicial decision, as in the situation of a person obliged to pay a lifelong pension for injuries inflicted⁶⁰.

The lawmaker conditions the existence of the right to receive the entitled party, who is in a state of need, to receive alimony. This implies that the parent that does not give the necessary

⁵¹ T.M.B., sectia a II-a, dec. pen. nr. 862/1989 (unpublished).

⁵² Court of Braşov, dec. 772/1973, in *R.R.D.* nr. 9 (1974): 66.

⁵³ T. Vasiliu et al., *Codul penal comentat și adnotat*, vol. II, (Bucureşti: Ed. Științifică și Enciclopedică, 1977), 382.

⁵⁴ T.J. Braşov, dec. 172 from 1993, in “*Dreptul*” nr. 9/1994, p.68; TS, sect. pen., dec. Nr. 1699 from 1979 in *R.R.D.* nr. 4 (1980): 63; J. SatuMare, stp.23 from 1982, in *R.R.D.* nr. 2 (1983): 56.

⁵⁵ I. Cora et al., *Curs de criminalistică*, vol. III, *Metodică criminalistică*, partea a III-a, Ministerul de Interne (Bucureşti, 1977), 18.

⁵⁶ A. Boroi, *Infrațiuni contra unor relații de conviețuire socială* (Bucureşti: Ed. All Beck, 1988), 32.

⁵⁷ A. Verdeș, „Elementul subiectiv la infrațiunea de abandon de familie”, *Revista Română de Drept* nr. 9 (1969): 72.

⁵⁸ Art. 101 Family Code “parents are obliged to care of the child. They are obliged to raise the child, to take care of his health and physical development, education, his professional training, according to his qualities, conforming with the state’s goals, to make him useful to the community.”

⁵⁹ T. Vasiliu et al., *Codul penal al R.S.R., comentat și adnotat – Partea specială*, vol. II (Bucureşti: Editura Științifică și Enciclopedică, 1977), 381; V. Dobrinou and N. Cornea, *Drept penal. Partea specială*, vol. II (Bucureşti: Ed. Lumina Lex, 2002), 476.

⁶⁰ V. Dongoroz et al., *Explicații teoretice ale codului penal român*, vol. IV, second edition (Bucureşti: Ed. All Beck, 2003), 476.

means of living to his child that has his own income, is not in contravention of the penal law. And just the same, it does not constitute abandonment by not fulfilling the obligations of the mother to pay a monthly sum to the minor entrusted to a children's home⁶¹.

It is not required that the person entitled to receive alimony be exposed to physical and moral suffering, but only that the perpetrator commit the offence with ill will⁶².

In the case of spouses, the obligation to support must be related to their obligation to bear the wedding costs, and the common property of the spouses contributes to this obligation. Therefore, on the basis of the provisions of the Family Code both spouses have the mutual obligation to contribute to the familial obligations equally, and we are of the opinion⁶³ that it constitutes an act of abandonment if the parent who although has his own income, he uses them in a personal interest and unjustifiably refuses to use it to fulfill his familial duties.

Considering the nature of this obligation to support, it can appear directly in the law, as in the situation of parents responsible for feeding and clothing their children, but it can be instituted by a judicial decision, as in the situation of a person obliged to pay a lifelong pension for harm inflicted⁶⁴.

In reference to the last legal variant, consisting in the not payment of alimony in ill will, a criminal investigation must ascertain whether there is a court order that declares this, the total sum of the alimony decided by the court, whether the perpetrator fulfilled his obligations and in what way, as well as whether the term imposed by the law of definitive remaining of the court's decision was met, or when was the alimony payment cut off. The lawmaker does not condition the existence of the offence committed in this way out of the need to constrainedly execute the court order, thorough which the alimony was set⁶⁵. The term of two months for the alimony payment comes into effect on the date the court order concerning the obligation to support became definite or it is executed alternatively. In the situation were the court order was begun being executed, but eventually the payments stopped, a new term of two months commences since the date when the last payment was made⁶⁶. Therefore, a partial payment is considered a non payment, because it is not the amount set by the court⁶⁷.

Considering the provisions⁶⁸ of the Family Code, which stipulate that an essential condition for a person to benefit from alimony is for him to be in a state of need, the minor is assumed to be in need, *per a contrario*, every time he earns his own income that permit him to afford a decent living, he cannot be considered in need of support. Therefore, even though the minor does have his own income, yet not enough to afford the necessary conditions to grow up, an education or a professional training, then the nonpayment of the alimony make the obliged party responsible in the eyes of the law⁶⁹. Therefore, even if the minor has found work and has his own income, it does

⁶¹ The Timiș County Court. pen. dec. Nr. 584/1976, in *R.R.D.* nr. 11 (1976): 53.

⁶² A. Boroi, *Infrațiuni contra unor relații de conviețuire socială* (Bucurști: Ed. All Beck, 1988), 32.

⁶³ A. Boroi, *Infrațiuni contra unor relații de conviețuire socială* (Bucurști: Ed. All Beck, 1988), 32.

⁶⁴ V. Dongoroz et al., *Explicații teoretice ale codului penal român*, vol. IV, second edition (București: Ed. All Beck, 2003), 510.

⁶⁵ To see O. A. Stoica, *Drept penal, partea specială* (București: Ed. Didactică și Pedagogică, 1976), 403.

As regards this point of view, in case there is a court order whereby the obligation to support is established and it is forcibly executed, then the obligation to pay falls on the third garnished party, which exonerates the obliged party of any obligation, in case of non payment of alimony after the act of garnishment came into effect. Therefore, in this case there is no offence of abandonment.

⁶⁶ V. Dongoroz et al., *Explicații teoretice ale codului penal român*, vol. IV, second edition (București: Ed. All Beck, 2003), 511. Gh. Nistoreanu et al., *Drept penal, partea specială*, vol I (București, 1994), 558; O. Loghin and A. Filipaș, *Drept penal, partea specială* (București: Casa de editură și presă ”ansa S.R.L.”, 1992), 298.

⁶⁷ V. Dongoroz et al., *Explicații teoretice ale codului penal român*, vol. IV, second edition, (București: Ed. All Beck, 2003), 511; V. Brutaru, „Abandon de familie”, *Revista de drept penal*, Anul XIV, Nr.2 (aprilie-iunie) (București, 2007): 94-104.

⁶⁸ Article 86 from the Family Code.

⁶⁹ T.S., sec. pen., decizia nr 221/1973 (nepublicată); Trib. Supr, secț. pen. dec. nr. 221/1973, în *C.D.* (1973): 53.

not mean that the parent is automatically released from paying the alimony he owed. So the minor that earns his own income is still eligible for support as this is not sufficient to ensure the necessities for a good development, education and professional training. That is why, not paying the alimony in ill will, within the conditions of article 305 paragraph, letter c), of the Criminal Code, constitutes in this case the offence of abandonment⁷⁰.

Therefore, in this last case it is most important to establish the presence of ill will, meaning that any criminal investigation must prove the fact that the person obliged to support, has voluntarily avoided fulfilling this obligation, despite the fact that he had the opportunity to pay the alimony as ordered by the court. In order to explain this matter, it must be ascertained which were the material capabilities of the offender and how much, in proportion to them, could he pay the alimony. *Per a contrario*, if the evidence proves that the offender did not have any objective reasons not to fulfill his obligations, it will be considered that he acted in ill will and with intent⁷¹.

Time is an important factor in establishing whether there was ill will, and therefore that the offence exists. Clarifying the issue of the time when the offence was committed or when no action was taken by the offender, is important in establishing his guilt.

As we have previously mentioned, special attention must be paid⁷² to how the perpetrator acted, in order to attribute the way he acted to ill will, taking into account the times he frequently changed jobs, that he did not notify his place of employment about his obligation to support, quitting his residence to avoid being forced to pay. Ill will also exists in the situation where the offender, although able to work, systematically refuses to become employed to obtain the income necessary to fulfill his obligations to his family⁷³, as in the case when a parent does not pay in ill will the alimony to support the minor for two months, even if the minor has his own income, though they are insufficient to ensure the necessary conditions to develop, study and gain a professional training⁷⁴, and even if the minor resides with the parents of the plaintiff who take care of him⁷⁵.

As a defining note concerning each one of these legal variants, it must be ascertained how much the person entitled to receive support is deprived of the means to live (a home, food, clothing, medicine) or of the moral support (lack of help and assistance), taking the form of physical or emotional suffering. When the entitled party is exposed to the danger of ending up in such a situation, it has the same consequences that justify incriminating the act of abandonment. For example, when the injured party faces eviction from his own house or his financial resources are almost gone, remaining without financial support⁷⁶.

4. Controversies Concerning the Unity and Plurality of the Offence in Matters of Abandonment

The situation in which a parent cannot pay alimony to several minor children is a particular problem. Opinions expressed in specialized literature are divided, on one side we have the unity of the offence⁷⁷, and on the other we have the plurality of the offence⁷⁸.

⁷⁰ Trib. Supr., secț. pen., dec. Nr 2211-1973, în *C.D.* (1973): 443.

⁷¹ V. Dongoroz et al., *Explicații teoretice ale codului penal român*, vol. III, Partea specială, (București: Editura Academiei Române, 1971), 572.

⁷² I. Cora et al., *Curs de criminalistică*, vol. III, *Metodică criminalistică*, partea a III-a, Ministerul de Interne (București, 1977), 19.

⁷³ T.S. sec. Pen. Dec. 2612 din 1972, *C.D.*: 380; T.J. Timiș, dec. pen. 1 din 1970, *RRD* nr. 10 (1970): 163, Aristorel Verdeș, „Elementul subiectiv în infracțiunea de abandon de familie”, *RRD* nr. 9 (1969): 72.

⁷⁴ T.S. sec. pen. Dec. 2211 din 1973, *C.D.* : 433.

⁷⁵ T.S. Timiș, dec. pen. 709 din 1973, *RRD* nr. 12 (1973): 157.

⁷⁶ V. Dongoroz et al., *Explicații teoretice ale codului penal român*, vol. IV, ed. a II-a (București: Editura All Beck, 2003), 510.

⁷⁷ G. Antoniu and C. Bulai, *Practică judiciară penală*, vol. III, Partea specială, (București: Ed. Academiei Române, 1992), 269; În același sens și majoritatea soluțiilor din practica judiciară: T.S. secț. pen., dec. nr. 1369 din

Practically⁷⁹, it has been decided that many offences can be classified as abandonment under the variant stipulated by article 305 letter c) of the Criminal Code, and materialized in the form of the offences regulated by article 33 of the Criminal Code, in the situation in which the alimony was not paid in ill will for more than two months, as decided by a single court order or even by orders given at separate dates and concerning more than one minor. The decisions made by the court are based on the offender's not paying the alimony, which had several results, thus proving the plurality of the offence committed as stipulated by art. 305 letter c) of the Criminal Code.

The problem raised in this respect was the possibility of committing this offence in both the ways stipulated by article 33 of the Criminal Code, as materialized as real or ideal offences. The resolutions given on this matter did not emphasize the number of judicial orders that obliged the offender to financially support the minor, as there could be only one judicial order or even more, but it did take into account the results of the sole inaction of the perpetrator.

Therefore⁸⁰, when the perpetrator is obliged by the court after only one ruling to support two or more children, the offence of abandonment takes on the ideal form of this offence, and it is the same in the case if there are two judicial rulings given at the same time. However, the case is different when the judicial rulings, whereby the obligation to support more minors was issued, were given at distinct times; this represents the real form of the offence as stipulated by article 305 letter c).

For our part, we consider that there is only one offence, even though there are more judicial ruling in favour of several persons; we sustain this opinion by arguing that to establish the obligation to support, the court must taking into consideration its personal character⁸¹, in the sense that this obligation must be clearly established, in relation to the needs of every minor, and connected to the debtor or creditor. Therefore, the number of minors entitled to alimony determines the number of legal relations that appear, as every minor is a passive subject of the offence, and there are as many obligations to support financially as there are underage children. Thus, there are several results, because by the nonpayment in ill will each minor suffers material damages as the determined by the different needs and interests of every one.

Relating to this matter, we state that the rulings given in practice⁸² by the Supreme Court consider that, in the case the alimony was not paid for several persons, there is only one offence of abandonment, even though there are several judicial rulings in favour of several persons.

5. A Controversial Matter Concerning the Progressive Form of the Offence of abandonment and the Moment When Its Consequences are Considered

The need to establish the progressiveness of the offence of abandonment consists in the consideration the legal effects that is done in relation to the date when the offence was committed

1982 în *R.R.D.* nr. 6 (1983): 61; Tj. Prahova, dec. pen. 639 din 1982, în *R.R.D.* nr. 2 (1983): 65; Tj. Suceava, dec. pen. nr. 673 din 1982, în *R.R.D.* nr. 12 (1983): 102.

⁷⁸ Gh. Vizitiu, "*Considerații privind încadrarea juridică în materia abandonului de familie prevăzută de art. 305 lit.c) C. pen.*", în *R.R.D.* nr. 2 (1979): 24, notă la soluțiile J. Suceava, stp. 92 din 1976, 486 din 1975, 1378 din 1975.

⁷⁹ In this sense a series of criminal sentences for abandonment were considered, materialized as the nonpayment of the alimony for a periode longer than two consecutive months, such as criminal sentence nr. 186 from the 14th of April 1995, sentence nr. 92 from the 22nd of January 1996, sentence nr. 1378 from the 14th of November 1995 (Suceava County), unpublished.

⁸⁰ A. Boroi, *Infractiuni contra unor relatii de convietuire sociala* (Bucuresti: Ed. ALL Beck, 1998), 40.

⁸¹ Article 94 from the Family Code stipulates that alimony is the personal right of the minor and it is owed to him in relation to his state of need and the means of the person that pays it.

⁸² C.S.J., sec. pen, dec. nr. 269/1993 (nepublicata); T.S. sec. pen., dec. nr. 1369 din 1982, in *Revista Romana de Drept*, nr. 6 (1983): 61.

and not relation to the date when it comes to an end⁸³. On one side⁸⁴, it has been asserted that all legal consequences of the of a continuous offense must happen while taking into account the date of the action or inaction specific to the main offence. On the other side⁸⁵, it is considered that these consequences must be connected to the precise date of the most serious outcome and in relation to it the offence is legally classified and the sanctions applied.

With regards to the committing of the offence in the first way, this does not pose a problem of classification as a temporary offence, that is done once the entitled party is abandoned, thrown out of the house or left without support.

As opposed to the first way the offence is committed, which is characterized as a temporary offence, the act of abandonment done with no ill will has a continuous quality, imposed by the nature of the obligation to support financially, a fact that implies the possibility of committing it during a period of time, in which the entitled person is in a state of need. As it is a continuous offence, it is over when the illegal action stops.

The act of abandonment, consisting in the not paying of the alimony when the offender becomes passive, after two months have passed, without any payment being made during this time, or when a verdict is passed for this offence⁸⁶. Therefore, the offence reaches its end when it is stopped, either by fulfilling the obligation, either by sentencing the offender. In the case where the offender's salary is retained for not paying the alimony in ill will, the offence ends when this comes into effect. Thus, if amnesty is reached, the misdeed is considered as pardoned⁸⁷. This solution has only partly been accepted, and it has been somewhat criticized⁸⁸, because if after his salary is withheld, the offender keeps cashing it without taking out the amount for the alimony and with no concern for who is guilty for this, the offence is not completely ended, because it is no the official act of withholding the salary that is decisive, but the end of the illegal conduct of the offender.

Some are of the opinion⁸⁹, to which we do not ascribe, that the offence of abandonment, consisting in not paying the alimony, is a momentary offence that ends once the two month deadline is reached.

Taking into account the two moments when the act of abandonment is assumed to have been committed according to the second legal way as stipulated by the law, we consider, along with other authors⁹⁰, that it is a continuous offence, because the illegal activity is not over when the two

⁸³ Maria Zolyneak, „Unele aspecte ale aplicării legii penale în timp”, *Analele tiințifice ale Universității „Al.I. Cuza”* (Iași, 1875): 81 și urm.; Maria Zolyneak, *Drept penal, partea generală*, vol. II (Iași: Ed. Fundației „Chemarea”, 1993), 457.

⁸⁴ C-tin Butiuc, *Infrațiunea complexă* (București: Ed. All. Beck, 1999), 12; Al. Boroï and Gh. Nistoreanu, *Drept penal. Partea generală*, ed. a IV-a revizuită conform noului Cod Penal, (București: Ed. All. Beck, 2006), 233; Al Boroï, *Drept penal. Partea generală* (București: Ed. CH. Beck, 2006), 175; Gh. Alecu, *Drept penal. Partea generală*, curs universitar, ediția a II a revizuită și adăugită (Constanța: Ed. Europolis, 2007), 313.

⁸⁵ C. Bulai, *Drept penal. Partea generală*, vol. I (București: Casa de Editură și presă Șansa SRL, 1992), 219; M. A. Hotca, *Drept penal. Partea generală* (București: Ed. CH. Beck, 2007), 474.

⁸⁶ D. Pavel, „Infrațiuni contra familiei din noul Cod penal”, in *RRD* nr. 10 (1969): 59.

⁸⁷ T.S., sec. pen. dec. nr. 1824 din 1988, in *RRD* nr. 9-12, (1989): 143.

⁸⁸ G. Antoniu and C-tin Bulai, *Practica judiciara penala, Partea speciala*, vol. III (Bucuresti: Ed. Academiei Romane, 1992), 270.

⁸⁹ I. Oancea, *Abandonul de familie*, in V. Dongoroz „Explicatii teoretice ale Codului penal roman, Partea speciala, vol. IV (Bucuresti: Ed. Academiei Romane, 1972), 573.

⁹⁰ O. A. Stoica, *Drept penal, partea speciala* (Bucuresti: Ed. Didactica si pedagogica, 1976), 403; T. Vasiliu, D. Pavel, G. Antoniu, ST. Daneș, G. Daranga, D. Lucinescu, V. Papadopol, V. Rămureanu, *Codul penal al R.S.R. comentat si adnotat adnotat – Partea speciala*, vol. II (Bucuresti: Editura Stintifica si Enciclopedica, 1977), 381 ; D. Pavel, „Infrațiuni contra familiei în noul Cod penal”, în *R.R.D.* nr. 10 (1969): 59 ; I.C.Vurdea, “O problemă de aplicare a amnistiei în infrațiunea de abandon de familie”, în *R.R.D.* nr. 12 (1970): 19.

month deadline is reached, without the payment of the alimony being made in this time, but continues until the payment is made and the offender sentenced, the moment when the offence comes to an end; after this moment, if the alimony is again not paid, it constitutes a new offence of abandonment, committed as stipulated by article 305 letter c) of the Criminal Code.

Conclusions

The criminal inquest into the offence of abandonment has a series of particularities in order to give evidence of it, as it is of great importance to settle all the problems that arise from the diversity of ways in which this offence can be committed. Considering the aggravating forms of this offence, this study focuses on its consequences, both the material and psychologically traumatic ones, as these aspects are especially relevant to the process of legally classifying this action as an offence or an infraction. The more so as the inquest requires close attention be paid when there are underage children exposed to moral and physical pain. From a psychological point of view, the inquest should prove the existence of ill will on the perpetrator's part, also considering in this case the time factor.

The study is an answer to the controversies existing in the practice of law, but also in the literature, by clarifying the problems concerning the unity and plurality of the act of abandonment, in classifying this offence as momentary or continuous, as well as establishing the moment when it was committed in relation to the consequences of the illegal activities.

Because of the numerous existing controversies surrounding this offence, we consider that it appears as a result of the shortcomings of our criminal legislation. For this reason we should constantly adapt our legislation to the reality we live in, the more this reality tests us in the most diverse circumstances. It is necessary to identify all sensitive issues which pose a problem in practice and to solve them with suitable laws.

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