



License applied: [CC-BY-NC 4.0](https://creativecommons.org/licenses/by-nc/4.0/)

DOI: 10.38173/RST.2024.28.2.15:165-170

Title:	<i>THE FAMILY AND THE CRIME OF FAMILY ABANDONMENT</i>
Authors:	Costina Vergina SFINTEȘ

Section: Social Sciences

Issue: 2(28)/2024

Received: 2 July 2024	Revised: 27 August 2024
Accepted: 19 September 2024	Available Online: 15 November 2024

Paper available online [HERE](#)

THE FAMILY AND THE CRIME OF FAMILY ABANDONMENT

Costina Vergina SFINTEȘ¹

ABSTRACT:

THE PASSAGE OF TIME AND GEOPOLITICAL AND STRATEGIC CHANGES WORLDWIDE AND BEYOND, HAVE OUTLINED SEVERAL PICTURES OF THE SAME SOCIAL REALITY, SO THAT IT WAS NECESSARY FOR THE LEGISLATOR TO INTERVENE AND PROTECT FAMILY SOCIAL RELATIONS AGAINST DEVIANT BEHAVIORS, CRIMINALIZING THE ACT OF FAMILY ABANDONMENT.

THUS, THE VICISSITUDES OF TIME, THE SHORTCOMINGS OF COMMUNITIES AND OF THE INDIVIDUAL IN HIS OWN PERSON, TOOK HIM OUT OF THE NORMAL PATH OF A PEACEFUL LIFE AND THREW HIM INTO THE TUMULT OF STORMS TRIGGERED BY PSYCHOLOGICAL TRAUMAS, REPRESSED NEEDS, MATERIAL LACKS AND CRIMES OF ALL KINDS.

KEY WORDS: FAMILY, SOCIETY, FAMILY ABANDONMENT, CRIME, DEADLINES

Starting from the words of the renowned Spanish-American philosopher George Santayana according to which the family is one of the masterpieces of nature, we observe that the individual as a bio-psycho-social entity is the material that life polishes like a diamond to sustain existence itself.

It is true that it is not enough to leave children only an inheritance in gold, but it would be more useful to leave them a beautiful inheritance of conscience, which has the necessary substrate for the cultivation of social human values, which the individual needs in everyday life, but also to plant the seeds of feelings of kindness, helpfulness, tolerance, acceptance, understanding, conscientiousness, respect and love.

Often the vicissitudes of time, the shortcomings of communities and of the individual in his own person, took him out of the normal course of a quiet life and threw him into the tumult of storms triggered by psychological traumas, repressed needs, material lacks or deaf cries to be that something he had been mentalizing for quite some time, but powerful enough to cause a change in the material world.

We note that in the first quarter of 2024, from the data reported by the relevant units, at the level of Gorj county there are 775 families in which both parents, one parent or the only supporter of the single-parent family is away to work abroad to be able to financially

¹ Scientific Researcher Ph. D., „Constantin Brâncuși” University of Târgu Jiu, costinastefanescu_31@yahoo.com

support their living their everyday life. This situation, in the long term, affects the quality of social relationships within families, something that is reflected in the situations regarding the number of cases registered regarding the commission of crimes that affect cohabitation relationships.

Among these 775 families, 125 have both partners working abroad, 513 have a parent working abroad and 137 are single-parent families where the sole breadwinner is working abroad.

Also, in the first semester of the current year, 133 children were institutionalized in centers, and a number of 108 children ended up in family placement with relatives up to the 4th degree.

Also, through the foster care service, 139 children/young people were institutionalized during the reference period at the level of Gorj County.

A careful analysis of the number of cases registered at the level of Gorj county regarding crime affecting interpersonal and cohabitation social relations reveals a greater vulnerability in the rural area of residence.

Crt. No	Period	Total cases registered	Urban environment	Rural environment
1	January - April 2024	449	168	281
2	2023	1519	597	921
3	2022	1612	591	1021
4	2021	1177	472	705
5	2020	754	278	476

We are witnessing, unfortunately, a significant increase in the degradation of social relations instead of human coexistence, and from 2020 until now criminal offenses have seen an upward trend in this matter, and especially in the rural residence environment, compared to the urban residence environment .

As far as the crime of family abandonment is strictly concerned, prev. and ped. of art. 378 of the Civil Code, there is a decrease in the cases of family abandonment in Gorj county, and in terms of the residential area, it is observed that in the rural area the number of crimes reported on this aspect is lower than in the urban area.

No. Crt.	Period	Total cases registered	Urban environment	Rural environment
1	January - April 2024	39	16	23
2	2023	133	69	64
3	2022	144	81	63
4	2021	213	110	103
5	2020	177	78	99

Honoré de Balzac described the family as always being the backbone of society, but the passage of time and geopolitical and strategic changes have outlined several pictures of the same reality. Thus, it was necessary for the legislator to intervene and protect family social relations against deviant behaviors, criminalizing the act of family abandonment.

The legislator states in art. 378 of the Criminal Code which are the actions and inactions, which, committed under certain conditions, make up the constitutive content of the crime of family abandonment.

Thus, at para. 1 stipulates that the commission of one of the following acts by the person who has the legal maintenance obligation, towards the one entitled to maintenance:

a) leaving, driving away or leaving without help, exposing him to physical or moral suffering;

b) failure to fulfill, in bad faith, the maintenance obligation provided for by law;
c) non-payment, in bad faith, for 3 months, of the maintenance pension established by court, is punishable by imprisonment from 6 months to 3 years or a fine.

Paragraph 2 of Article 378 of the Criminal Code shows that, with the same penalty, the non-execution, in bad faith, by the convicted person of the periodic benefits established by court decision, in favor of the persons entitled to maintenance from the victim of the crime.

For this type of crime, regardless of whether it is the standard version or the assimilated version, the criminal action is initiated upon the prior complaint of the injured person, and the act is not punished if, before the end of the criminal investigation, the defendant fulfills his obligations.

Also, in paragraph 5 it is specified that if, until the conviction is final, the defendant fulfills his obligations, the court orders, as the case may be, the postponement of the application of the punishment or the suspension of the execution of the punishment under supervision, even if the conditions provided by the law for this.

The crime of family abandonment in the new criminal code takes over, to a large extent, the provisions of the Criminal Code from 1969. The most important changes concern the time interval regarding the non-payment of the maintenance pension, the addition of a way of committing the act, a cause of non-punishment, as well as adjustments regarding sanctions. Regarding continuity issues, previous doctrine and jurisprudence remain relevant.

The offense regulated in this way basically sanctions the violations of the maintenance obligation due, as a rule, between members of the same family. Failure to comply with this obligation may also have consequences regarding other rights of the person entitled to receive maintenance (the right to physical and mental integrity, to health, to education, etc.)

This criminalization involves the failure to fulfill a maintenance obligation that intervenes by virtue of the law and that is executed in kind, voluntarily. Pursuant to articles 513 and 516 of the Civil Code, there is an obligation of maintenance between husband and wife, relatives in direct line, between brothers and sisters, as well as between other persons specified by law. The legislator states in art. 524 of the Civil Code that the person in need who cannot support himself from his work and his goods has the right to maintenance.

Also, the crime of family abandonment, prov. by Art. 378 paragraph 1, letter c) of the Civil Code, assumes that the maintenance obligation established by a court decision must take the form of a pension and be enforceable through periodic payments.

Family abandonment is a crime that refers to the non-payment of alimony or non-performance of obligations towards one person (the injured party), by another who is required by law to do so. The obligation is established (as a rule) by a court sentence. There is also the situation when a lawyer or a notary gives an enforceable title to a mediation agreement.

A particular case is when the mediation agreement establishes clauses for the maintenance obligation, regardless of whether it is payment in kind or money. If the mediation agreement is invested with the enforceable title, it can be submitted to the bailiff. The investment can be made through a lawyer, notary or presentation in court. Of course, the injured party can also initiate the criminal action for family abandonment.

The issues that can be raised regarding this crime are the following: what type of crime is the crime of family abandonment and when does the deadline for filing a preliminary complaint run?

Regarding the legal nature of the crime of family abandonment, prev. of art. 378 paragraph 1, letter c of the CP, judicial practice and doctrine have shaped two opinions:

In a first opinion, the modality of the offense under art. 378, paragraph 1, letter c), of the Criminal Code, is a continuous successive crime that expires upon the completion of the 3-month period (2 months as it was in the old regulation provided by art. 305, paragraph 1 of the 1969 Criminal Code) and is exhausted either by fulfilling the obligation or by pronouncing a judgment of conviction. In relation to the method of payment of maintenance, periodic, monthly benefit, which requires another manifestation of will with the maturity of each installment, the continuous nature of the crime receives a successive character.²

In another opinion, the crime of family abandonment in the way discussed is a momentary crime and is consumed when the payment period expires, namely 3 months, which is a constitutive element of the crime. Among the supporters of this opinion are V. Papadopol and D. Pavel. See pages 107-109, from the Forms of the criminal unit in the Romanian criminal law, Casa de Editură si Presă Șansa SRL, Bucharest 1992.

Family abandonment in this normative way was also characterized as a continuing crime by professor F. Streteanu in the article published by him in Criminal Law Review no. 4/1998, p. 77.

In the light of the new codes and taking into account the non-uniform practice of the courts regarding the expiry of the term for filing the preliminary complaint for the prosecution of the person alleged to have committed the crime of family abandonment, the Constanța Court of Appeal, Criminal Section and for cases with minors and family requested the High Court of Cassation and Justice issuing a preliminary decision to establish "If, in the case of the crime of family abandonment, provided for in art. 378 paragraph (1) let. C) from the Criminal Code, by the phrase "committing the act" provided by the provisions of art. 296 of the Code of Criminal Procedure (relevant for calculating the deadline for filing a preliminary complaint) is understood as the "date of cessation of inaction" (date of "exhaustion" of the crime of family abandonment) or "date of consummation of the crime" (expiration of the 3-month period during which the author remained passive)".

Following the deliberation, the High Court of Cassation and Justice issued decision no. 20 of 2020 which established that "in the case of the crime of family abandonment provided for in art. 378 paragraph (1), letter c) from the Criminal Code, the deadline for introducing the preliminary complaint provided in the content of art. 296 par. (1) and (2) from the Code of Criminal Procedure - 3 months from the day the injured person or his legal representative learned about the commission of the act - runs from the date on which the injured person or his legal representative became aware of the commission of the act.

The term of 3 months provided for in the content of art. 296 para. (1) and (2) from the Code of Criminal Procedure can flow from three different moments, as follows:

- a) from the moment of the consummation of the crime, if this moment is identical to that of knowledge of the fact;
- b) from the moment of knowledge of the commission of the deed, which can be between the moment of consummation of the deed and the moment of exhaustion
- c) from the moment of exhaustion of the crime or after it, with the knowledge of the commission of the deed, in which case the limitation period for criminal liability must not have been fulfilled".

Also, by the same decision, the High Court of Cassation and Justice emphasized the legal nature of family abandonment as a continuous crime.

²ICCJ, Criminal Division, decision no. 2022 of April 15, 2004, the Supreme Court decision no. 26 of 6.01.1977, preseptated in CD, 1977, p. 296;

This decision brought added value to both the criminal investigation activity in the prosecution phase of the process and the trial phase, in view of the fact that the legal framework for analyzing the prior complaints that requires investigations under the aspect of committing crimes of family abandonment, without the possible lateness exceptions being resolved differently by courts or prosecution units of the same degree.

In the case of the modalities provided for in art. 378 paragraph 1, letters b. and c, from a subjective point of view, the condition of bad faith must also be met, in the sense that the one who has must fulfill the previously established maintenance obligation, had the opportunity to pay it, but refuses to fulfill it .

Thus, in the situation where the person obliged to perform the maintenance obligation does not have the opportunity to honor his obligations, he foresees the result of his act of not fulfilling his obligation, that of harming the person entitled to maintenance, but he does not pursue it, but he accepts it precisely because of his impossibility to honor his obligation, although the formal conditions of direct intention are met, the condition of bad faith will not exist. In this case, the subjective conditions of the crime are not met.

In the case of the crime of family abandonment, it is no longer possible to reconcile the parties, but it is possible to withdraw the complaint, which can also operate *in personam*, according to art. 158 paragraph 2 of the Criminal Code.

This crime presents a special point, in the situation where the passive subject of the crime is a minor, meaning that the prosecution units have the possibility to exercise the criminal action *ex officio* when they find that the preliminary complaint has been introduced beyond the stipulated three-month period by law., but this option must be explicit and unequivocal and must result from the considerations of the ordinance to initiate the criminal action.

Thus, the prosecutors have the possibility that under art. 309 of the Criminal Procedure Code and art. 157 paragraph 4 of the Civil Code to fulfill the role of the Public Ministry's action, that of fighting for the respect of the rights and freedoms of citizens and protecting vulnerable persons in the face of crimes in the civil and criminal realm.

Compared to the previously discussed aspects, there remains a vulnerable point, that of asking whether an inaction subsequent to the consummation of the crime will determine the retention of a plurality of crimes in the form of the competition or of a legal unit of crime in the form of the continued crime?

On the other hand, it should not be possible for the judicial bodies to have the possibility to break the natural unity of the crime by withholding the formulation within the term of the preliminary complaint only for a part of the time period in which the continuous crime of family abandonment is committed, with the exclusion of the analysis of the previous behavior of the debtor of the maintenance obligation.

In other words, only the last 6 months prior to the time of the preliminary complaint cannot be used, excluding from the natural unit of continuous crime the period that has elapsed since the date of the consummation of the crime. Such a perspective could be appropriate if the accepted jurisprudential reasoning was that inaction after the expiration of the term leads to the retention of a series of crimes.

Surely the time to come will bring the change that is needed in society, but at this moment, it is crucial to emphasize the need to shift the focus to adult education, so that their sleeping consciousness is awakened, through the lens of which they understand that each, more or less, directly or indirectly, have a pen with which they write the destiny of some people, on whom they have a legal and moral obligation, to respect them, to take care of

them, to educate them and to provide them with the necessities of life, both physically as well as intellectually and spiritually.

REFERENCES

- [1] Criminal Code
- [2] Criminal Procedure Code
- [3] Decision no. 2/2020 pronounced by the High Court of Cassation and Justice
- [4] ICCJ, Criminal Division, decision no. 2022 of April 15, 2004, Supreme Court decision no. 26 of 01/06/1977;
- [5] Criminal Law Review no. 4/1998
- [6] Teodor Bodoască, Family Law. University course, Edition 6, Universul Juridic Publishing House, Bucharest, 2024.
- [7] Statistics - Gorj County Statistics Directorate.