

# Brief Considerations Regarding the Crime of Preventing Access to Compulsory Education in the Romanian Criminal Code

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**ABSTRACT:** The inclusion of this crime in the current Romanian Criminal Code was a necessity given the alarming increase in the dropout rate by students in lower classes and beyond. The legislator considered it necessary to sanction the parents or guardians of minors who prevent their access to compulsory education in order to ensure the child's right to education. The text of the law does not refer to the situations in which this abandonment is determined by a precarious material situation, in which case the state must intervene by other means, but the situations in which the parent acts abusively, withdrawing the minor from studies or preventing to follow them, although he would have had all the conditions for it. The deed is not punished, if before the end of the criminal investigation the defendant ensures the resumption of the attendance of the courses by the minor. If, until the conviction is final, the defendant ensures the resumption of attendance by the minor, the court shall, as appropriate, postpone the application of the sentence or suspend the execution of the sentence under supervision, even if the conditions provided by law are not met.

**ERS** : crime, education, minor, right to education, school dropout

## Introduction

The crime of *preventing access to compulsory education* has no correspondent in the Romanian criminal legislation. The need for this incrimination has emerged in recent years as a result of the alarming increase in school dropout, which practically means a considerable decrease in the chances of successful insertion of today's children in tomorrow's society.

Many factors affect the completion of studies, including the risk of dropping out of students with poor results or older for the level at which they are enrolled. Such children and young people will certainly contribute to the number of those who leave school early, especially those who have repeated several times or those who have not enrolled at the right age (Strategy PTS 2015, 29).

The European Commission (2013) says that school dropout generates unemployment, social exclusion, poverty and health problems. There are many reasons why some young people drop out of school too early: personal or family problems, learning difficulties or a precarious socio-economic situation. Other important factors are the functioning of the education system, the atmosphere in schools and the relationships between teachers and students.

In Romania, at most levels of schooling, the phenomenon of absenteeism remains an unresolved issue for many of the school units, both in urban and rural areas. The child has the right to receive an education that allows him to develop, in non-discriminatory conditions, his skills and personality. Therefore, the state must provide the environment conducive to its development.

Parents also have an important role in the education process, because they choose the kind of education that is to be given to their children. In addition, they are also obliged to enroll the child in school and to ensure that he regularly attends school classes.

Also as a consequence of the realities in the Romanian society as well as a component of the protection of minors' rights, that of ensuring the child's right to education, the legislator

considered necessary the sanctioning of parents or guardians of minors who prevent their access to compulsory general education.

According to art. 32 para. (1) of the Romanian Constitution (1991, republished in 2003) „The right to education is provided by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and postgraduate improvement”.

The right to education is considered a part of the right to education, and the last-mentioned right includes a diversity of rights and freedoms of parents and children, which correspond to a number of obligations of the state. The guarantee of this right ensures the education of the person in order to be able to fit according to his performances and skills in the social structures. At the same time, the right to education imposes a series of obligations in the relations between parents and children. (Selejan-Guțan, Muraru and Tănăsescu 2005, 306).

Access to education is not only a right, but also an obligation, since, according to article 26 of the Universal Declaration of Human Rights “education must pursue the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It must stimulate understanding, tolerance and friendship between all peoples and between all racial or religious groups”.

Law no 272/2004 on the protection and promotion of children’s rights, republished in the Official Gazette no 159 of March 5, 2014 establishes, in the content of art. 47 para. (2), the obligation of parents to provide their children with the necessary conditions for upbringing, education, learning, vocational training, as well as a healthy living environment.

If the parents or persons who, according to the law, have the obligation to support a child cannot ensure, for reasons beyond their control, the minimum needs for housing, food, clothing and education of the child, the state, through the competent public authorities, is obliged to provide them with appropriate support, in the form of financial benefits, benefits in kind and in the form of services, in accordance with the law - art. 48 para. (2).

## **Legal regulation**

Crimes against the family are a subgroup within the group of crimes that affect relationships on social coexistence. The composition of this subgroup was made according to the criteria of the special legal object, more precisely according to the social relations regarding the family, as a special social value defended by the criminal law (Oancea 2003, 491).

In the current Romanian Criminal Code, crimes against the family are positioned in Chapter II of Title VIII dedicated to crimes that affect relationships on social coexistence as in the previous criminal code. The group of crimes against the family is made up of crimes that are directed mainly against family relationships: Bigamy - article 376, Incest - article 377, Family abandonment - article 378, Non-compliance with the measures regarding the custody of the minor - art. 379 and Preventing access to compulsory general education - art. 380. The last-mentioned offense is a new offense introduced in the code.

In its current form the crime of preventing access to compulsory general education, provided by article 380 of the Criminal Code, has the following content: ”Preventing access to compulsory education - (1) A parent or a person to whom a minor was entrusted by law and who withdraws the minor from school or prevents him/her, by any means, from attending compulsory education, shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine. (2) The act shall not be punished if, before the criminal prosecution is complete, the defendant submits evidence that the minor has resumed attendance. (3) If, until the court order is deemed final, the defendant ensures the resumption of attendance to courses by the minor, the court shall order, as applicable, the deferred

enforcement of the penalty or the stay of execution of the sentence under supervision, even if the requirements provided by the law for such action are not met”.

### **The object of the crime**

The crime of preventing access to compulsory general education has as a special legal object the social relations related to ensuring the normal upbringing and education of minors, guaranteeing their access to compulsory general education.

According to article 9 para. (2) of Law no 1/2011 of National Education, published in the Official Gazette no 18 of January 10, 2011, the state provides basic funding for all preschoolers and for all students in general state compulsory education, private and denominational accredited. Compulsory general education, of 10 classes, includes primary education, lower secondary education and the first 2 years of upper secondary education, as it results from the provisions of art. 24 para. (1) of the Law.

### **Subjects of the crime**

The *active subject* is qualified, being able to have this quality only the parent of the minor or the person to whom the minor was entrusted for upbringing and education.

Criminal *participation* is possible in the form of instigation and complicity. *The passive subject* is the minor who, being prevented from attending the compulsory general education courses, his right to education guaranteed by the European Convention on Human Rights and the Romanian Constitution is violated.

### **Constitutive content**

#### **a) The objective side**

**The material element** of the crime consists in the unjustified action of the parent to withdraw or prevent the minor, by any means, to attend the compulsory general education courses.

*Withdrawal* presupposes as a premise the enrollment of the minor in the compulsory general education courses, as it is enshrined in art. 24 para. (1) of the National Education Law no. 1/2011, regardless of whether or not the course started. It is irrelevant whether the withdrawal was made formally, by the introduction by the defendant of a request alerting the educational institution to his intentions, or informally, without informing the educational institutions about his decision to withdraw the minor from the courses. . It is irrelevant, in terms of the existence of the crime, whether the minor had good or poor results in school. The incriminating text does not distinguish, from the point of view of the existence of the crime, whether the withdrawal was made with or without the consent of the minor child. (Sima 2016, 92).

*Preventing* the minor from attending compulsory general education is criminalized regardless of the means used by the parent or the person to whom the minor was entrusted. Thus, preventing the minor from attending the courses can be done by non-enrollment, by simple prohibition or under the interdiction followed by the threat of a punishment or by convincing the minor that attending the courses is not necessary for his training and no condition of a good integration in society (*Idem*).

**The essential requirement** for the existence of the crime, in both ways of committing it, is that the withdrawal or prevention by any means of the minor to follow the courses of compulsory general education be done unjustifiably.

The law does not specify the situations that would justify the withdrawal or prevention of the minor to attend compulsory general education, but we can conclude that such causes can be a serious illness, a circumstance that would endanger the child's life, state of war, etc.

This category does not include the precarious financial situation, a situation in which the parent or the person to whom the minor was entrusted may request the support of the local authorities, under the conditions provided by Law no 272/2004 on the protection and promotion of children's rights.

**b) On the subjective side**, the offense of obstructing access to compulsory general education is committed intentionally, namely the active subject (the minor's parent or the person entrusted with the minor for upbringing and education) provides for immediate follow-up and pursues or accepts its occurrence.

**The immediate consequence** is the creation of a state of danger for the normal development and training of the minor.

**Causal report.** There must be a causal link between the activity which constitutes the material element of the crime (the action of withdrawing or preventing by any means the minor from attending the compulsory general education courses) and the immediate consequence (the state of danger for the normal development and training of the minor). This connection results from the commission of the incriminated act itself (*ex re*).

The deed is incriminated only in the **consumed** form. **The preparatory acts and the attempt**, although possible, are not incriminated. The crime is consumed when the material element of the action of withdrawal or impediment by any means of the minor to attend the courses of compulsory general education has been realized. In the case of committing the act in the manner of withdrawal, the action is momentary, instantaneous, while, in the case of obstruction by any means, the action is continuous. In the provisions of article 380 of Criminal Code, the typical or simple form of the crime is incriminated in two ways: the withdrawal or prevention of the minor to follow the forms of compulsory general education. The law does not provide for aggravated ways, but the deed can be committed in a multitude of concrete ways that can lead to mitigation or aggravation of criminal liability. Committing the crime is punishable by imprisonment from 3 months to one year or a fine (Sima 2016, 93-94).

## Conclusions

The responsibility for the upbringing and development of the child rests, first and foremost, with the parents, who have the obligation to exercise their rights and to fulfill their obligations towards the child, taking into account the best interests of the child.

Given the compulsory education, the Romanian Criminal Code, in force since February 1<sup>st</sup>, 2014, also introduced penalties for parents who withdraw their children from school or prevent them from attending school.

Thus, the Penal Code establishes punishments for parents who withdraw their children from school or prevent them from attending school, classifying these acts as crimes and introducing them in the chapter "Crimes against the family".

Taking into account the principle of protecting the interests of the family, article 380 para. (2) The Criminal Code stipulates that the deed shall not be punished if, before the end of the criminal investigation, the defendant ensures the resumption of attendance by the minor.

If this fact has not been achieved, the defendant may ensure the resumption of attendance of the courses by the minor until the final decision of conviction, in which case, according to article 380 para. (3) of the Criminal Code, the court orders the postponement of the application of the sentence or the suspension of the execution of the sentence under supervision, even if the conditions provided by law for it are not met.

The criminal action is initiated *ex officio*, the criminal investigation is carried out by the criminal investigation bodies, and the jurisdiction to judge the case in the first instance belongs to the court.

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