

The Crime of Leaving a Person in Distress Without Assistance. Comparative Law Study

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Abstract

In criminal law, the criminal offence of ‘leaving a person in distress without assistance’ refers to the act of abandoning or failing to render assistance to a person in immediate and imminent danger of losing his life or suffering serious bodily harm. It is important to see how this crime is treated in the laws of Romania, France and Italy to understand the similarities and differences. The study reflects differences resulting from different cultural and legal approaches, highlighting how each country perceives the moral and legal responsibility of individuals in emergency situations.

Keywords: offence, legal systems, criminal character, danger, omission, comparative law.

JEL Classification: K14

1. Introduction

The offence of leaving a person in distress without assistance is a criminal law norm that penalises negligence of the moral and legal obligation to intervene in situations where a person’s life, bodily integrity or health is in danger. This crime is regulated in different legal systems and reflects a common principle of social solidarity and human responsibility.

Leaving a person in need without help is based on the idea that every individual has a minimum duty to help those in need, especially in critical situations. Refusal to provide help when possible, without endangering one’s own life or safety, is considered an act of gross negligence and inhumanity.

In national laws, this crime is defined with the aim of protecting the integrity of individuals and promoting altruistic behaviour in society. Different countries have specific wording and penalties for this crime, but the essential elements are similar.

2. Legislation in Romania

The offence of leaving a person in distress without help is criminalised in the Criminal Code adopted in 1936, in Title XIII Crimes and Offences against Persons, Chapter I Crimes and Offences against Life and Bodily Integrity, Section IV Other Offences against Life and Bodily Integrity, Article 489. In addition to failure to render aid to a person abandoned, lost, seriously injured or in danger of death, Article 489 of the Criminal Code of 1936 also penalises a driver who, after causing an accident, fails to stop. This offence is punished differently in the following Criminal Codes. In the Criminal Code of 1969, the offence is found in the provisions of Title IX Offences

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affecting relations concerning social coexistence, Chapter III *Offences concerning assistance to those in distress*, in two articles, art. 315 *Leaving without assistance* and Art. 316 *Leaving without assistance by failing to notify*. Leaving without assistance is the act of a person who, finding a person whose life, health or bodily integrity is in danger and who is unable to save himself, fails to give the necessary assistance or fails to notify the authority. For example, the act of a driver of a motor vehicle who finds a seriously injured person and does not give assistance or notify the authorities, or the act of a person who, seeing a person surrounded by criminals, does not notify the police, or the act of a person who finds a person unconscious and does not notify the health unit, etc². Leaving a person without help by failing to notify the police is the act of a person who, finding an abandoned or lost person in need of help, whose life, health or bodily integrity are endangered, fails to notify the authority. Failure to notify authority by a person who finds an abandoned or lost person, such as a child or a disabled or infirm person or a person in need of help whose life, health or bodily integrity is endangered, constitutes a socially dangerous act.³

In view of the similarity between this offence, punishable under Article 315 of the Criminal Code of 1969, and the offence provided by the legislator in Article 316, *Leaving without help by failing to notify*, in the Criminal Code in force since 2009 (Law no. 286/2009), they were combined in a single article, *Leaving without help a person in distress*, including it in Chapter V – *Offences concerning the obligation to assist those in distress*, Title I – *Offences against the person*, Article 203. By maintaining this criminalisation, it is also legally clear that there is a need for solidarity among members of society so that the life, health or bodily integrity of a person in distress who is unable to save himself or herself can be saved either by him or her own intervention or by notifying the authorities.⁴

The act falls perfectly within the offence of commission by omission, stipulated in Article 17 of the Criminal Code – The offence of the commission that implies the production of a result is also considered committed by omission, when:

- a) there is a legal or contractual obligation to act;
- b) the perpetrator of the omission, by a previous action or inaction, has created a state of danger for the protected social value, which has facilitated the occurrence of the result⁵; both in the case where the offence is committed by failing to provide assistance and in the case where the offence is committed by failing to notify the authorities.

Undeniably, the provision of Article 489 of the Criminal Code of 1936 is much closer to the form of Article 203 paragraph (1) of the Criminal Code in force, from the point of view of the fact that it contained the expression ‘*immediately*’, which was omitted in the wording of the Criminal Code of 1969.

As for the more favourable criminal law, art. 203 of the Criminal Code in force, the special minimum is higher compared to art. 315 of the Criminal Code of 1969, and

² A. Boroj, *Infrațiuni contra unor relații de conviețuire socială*, All Publishing House, Bucharest, 1998, p. 109.

³ Ibid.

⁴ P. Dungan, T. Nedeanu, V. Pașca, *Drept penal. Partea specială. Vol. I. Prezentare comparativă a noului Cod penal și a Codului penal din 1968*, Universul Juridic Publishing House, Bucharest, 2012, p. 128.

⁵ *Noul și vechiul Cod Cod penal, Actualizat*, C. H. Beck Publishing House, Bucharest, 2014, p. 12.

art. 316 of the same Criminal Code is much more favourable, resulting in the old Criminal Code the limits of punishment are lower. Also, the offence of *Leaving a person in difficulty without assistance* has been attached a ground for non-punishment, according to the provisions of Art. 203 (2): *the act does not constitute an offence if, by providing assistance, the perpetrator would expose himself to a serious danger to his life, bodily integrity or health, in which case criminal liability is waived*.

In specialised works it is argued⁶ that the problem of fear of danger cannot be invoked in the situation of those persons who, because of their special situation, have the obligation and duty to face danger and danger at all risks (for example firefighters or persons specifically assigned to save those in danger of drowning, etc.). If, however, it is certain that the rescue action would lead to the loss of life of the rescuer, even these persons may invoke this justifying cause, as there is no obligation to give their own life in order to fulfil their official duties.

The provision that removes the criminal nature of the act in Article 203 (2) was not specifically provided for in the Criminal Code 1969, but it only covers the situation in which the person's act is committed by inaction, i.e. failure to give the necessary help; in other cases, the general provisions on justifying and non-imputability causes may apply; for example, the perpetrator is physically forced to act, being unable to provide help and to notify the authorities immediately.⁷

Due to this justifying ground for non-punishment we can state that the provision of Article 203 paragraph (2) has correspondence in the last paragraph of Article 489, the Criminal Code of 1936, which stipulated that: *The same punishment shall also apply to anyone who, seeing a person seriously injured or in danger of death, fails to render aid to him, without reasonable fear of any danger to himself or others, or to notify the authority immediately*.

This justifying ground for non-punishment admits the existence of a well-founded state of danger for the person of the perpetrator or any other person, but doctrinal, the provisions of Article 203 (2) have generated opinions that contradict each other, considering that it is a cause for removing imputability⁸ or the existence of a cause for excluding the unjustified nature of the act⁹. However, the legislature wished to emphasise the conformity of passive conduct with the requirements of the legal order, since it would be flagrantly unreasonable to require, from a legal point of view, the recipient of a legal rule to provide aid at the risk of seriously endangering his own person. Therefore, the special hypothesis established by the legal text, which has been widely

⁶ V. Dobrinoiu et al., *Noul Cod penal comentat, vol. II, Partea Specială*, Universul Juridic Publishing House, Bucharest, 2012, p. 98; I. Ristea, *Drept penal., Partea Specială*, vol. I, Universul Juridic Publishing House, Bucharest, 2014, p. 103.

⁷ C. Voicu, A. S. Uzlău, R. Moroşanu, C. Ghigheci, *Noul Cod penal, Ghid de aplicare pentru practicieni, prezentare comparativă NCP – CP anterior, analiza instituţiilor noi, legea penală mai favorabilă, recursuri în interesul legii*, Hamangiu Publishing House, Bucharest, 2014, p. 325.

⁸ C. Duvac, „Noul Cod penal si Codul penal anterior, studiu comparativ”, *Revista de drept penal*, vol XXII, 2015, nr. 1–2, p. 30.

⁹ I. Rusu, *Lăsarea fără ajutor a unei persoane aflate în dificultate*, Universul Juridic, no. 11, 2019, www.lege5.ro.

regarded in legal doctrine as a genuine¹⁰ 'passive state of necessity',¹¹ cannot be anything other than a special justifying reason.

Compared to the Criminal Codes of 1936 and 1969, which paid particular attention to offences against the state, in the new Criminal Code, *offences against the person* are included in Title I, giving them a priority place, as they are found in most European codes, such as France, Austria, Spain, etc., 'reflecting the current conception of the place of the person and his rights and freedoms in the hierarchy of values that enjoy protection, including by criminal means'.¹²

Constitutive elements of the offence are:

The *specific legal object* of the crime of leaving a person in distress without help is made up of social relations relating to the assistance of those in distress and unable to save themselves, i.e. human solidarity and the obligation to help those in distress.

Given that the offence provided for in Article 203 of the Criminal Code is committed by failing to render aid or immediately notify the authorities, the act of omission does not directly influence the person's body, and this aspect determines the lack of a material object.

The *active subject* of the offence is not determined and does not have a special quality, so it can be any person who has found a person in difficulty. Also, the active subject can be the legal person if the offence is committed in the performance of the object of activity or in the interest or on behalf of the legal person.¹³

Because it is an offence of omission, it 'is not susceptible of the form of participation of co-authorship'¹⁴; any perpetrator is the author of the offence and is not susceptible of participation, but possibly of a plurality of acts committed simultaneously or successively by different persons¹⁵. At the same time, it has been doctrinally held that there may also be participation in the form of instigation or moral complicity.¹⁶

The *passive subject* can be any person whose life, health or bodily integrity is in difficulty and cannot save himself/herself; thus, we conclude that the passive subject is qualified (circumstances). In both Romanian¹⁷ and foreign¹⁸ doctrine, the dominant thesis is that it is not of interest whether the victim, at the time of the murder, was viable, i.e. had the capacity to live longer. Vannini took the isolated view that it was not sufficient that the victim was alive, but that he should also have had the capacity to live;

¹⁰ G. Pelican, *Ipotezele speciale de înlăturare a trăsăturilor esențiale ale infracțiunii în reglementarea Noului Cod Penal*. Themis, 2/2020, <https://inm-lex.ro/wp-content/uploads/2020/12/2.Pelican-George-Ipoteze-speciale-1.pdf>.

¹¹ M.-C. Ivan, Gh. Ivan, *Cauzele Justificative*, Ed. Universul Juridic, Bucharest, 2016, p. 211.

¹² V. Dobrinioiu et al., *op. cit.*, vol. II, p. 8; I. Ristea, *op. cit.*, p. 5.

¹³ P. Dungan, T. Medeanu, V. Pașca, *op. cit.*, p. 129, I. Ristea, *op. cit.*, p. 101.

¹⁴ V. Dobrinioiu et al., *op. cit.*, p. 96, I. Ristea, *op. cit.*, p. 101.

¹⁵ V. Dongoroz, et al, *Explicații teoretice ale Codului penal român*, vol. I. Ed. Academiei, Bucharest, 1972, p. 632.

¹⁶ O. Predescu, A. Hărăstășanu, *Drept penal. Partea Specială. Examinare comparativă. Codul Penal – Noul Cod penal*, Bucharest, Universul Juridic, 2012, p. 490.

¹⁷ V. Cioclei, *Codul Penal și legile conexe*, Ed. C. H. Beck, Bucharest, 2013, p. 20; Bulai C, Filipaș A., Mitrache C., Bulai B.-N., Mitrache Cr., *Instituții de drept penal. Curs selectiv pentru examenul de licență*, 3rd ed. revised and added, Ed. Trei, Bucharest, 2006; Gh. Ivan, M. C. Ivan, *Drept penal, Parte specială conform noului Cod Cod Cod penal*, 2nd ed., Ed. C. H. Beck, Bucharest, 2015, p. 338.

¹⁸ F. Antolisei, *Manuale di diritto penale. Parte speciale*, vol. I, Dott. A. Giuffrè Editore, S.p.A., Milano, 2002; Gh. Ivan, M.-C. Ivan, *op. cit.*, p. 10.

this view has not been accepted in Italian doctrine and case law.¹⁹

As part of the objective side, the substantive element of the offence under study can be realised through two inactions: failure to provide the necessary help, as well as failure to notify the authority. The first inaction consists in failing to provide help to a person found in danger, e.g. an injured person, a person likely to drown, etc., while the provision of help can remove the situation of danger. It can therefore be seen that the substantive element of the offence alternates between two ways of helping the person in distress or immediately notifying the authorities, which requires the perpetrator to choose the way he considers appropriate to save the person in distress.

The offence of leaving a person in need without help is a crime of inaction, which is committed with direct or indirect intent, or by negligence, as is also reflected in Article 16 paragraph (6) of the Criminal Code ‘*the act consisting of an action or inaction constitutes a crime when committed with intent. An act committed with negligence constitutes an offence only when expressly provided for by law*’. The result which the perpetrator has foreseen and intended or accepted under the hypothesis of intent, or which he had hoped to avoid or did not foresee, although he could and should have foreseen it under the hypothesis of fault, is the increased danger to the life, health or bodily integrity of the passive subject if he does not promptly render assistance.²⁰

3. Legislation in France

For a long time, there was no legal obligation in the French Penal Code to ‘assist’. The first legislative appearance of such an obligation was in the draft reform of the Criminal Code drawn up in 1934, in the provisions of Articles 108 and 251, but this Criminal Code was abandoned. Under the Vichy regime, this legal provision was introduced in an act called the ‘Law of October 25, 1941’²¹. Nowadays, the existence of the obligation to rescue seems self-evident in French law and is no longer questioned.²²

The crime of leaving a person in distress without assistance has its correspondence in the current French Penal Code in Chapter III – Crimes of endangering the person, Section 3 on hindering measures of assistance and failure to jump to the aid, Article 223-6, paragraph 1 (Article 63-1 of the old Penal Code), approved by Ordinance No. 2000-916 of September 19, 2000, Article 3 Official Journal of September 22, 2000, in force on January 1, 2002), amended by Law No. 2018-703 of August 3, 2018 – Article 5, as follows: ‘*any person who, being able to prevent by his immediate action, without any risk to himself or to third persons, a crime, or an offence against the bodily integrity of the person, voluntarily refrains from it*’²³.

The obligation to act for the benefit of others when in danger does not only derive from individual morality, it can be the result of collective morality. Different philosophies and religions require people to intervene. The legislator has sanctioned passive, offensive behaviour if we take into account the evolution towards a certain

¹⁹ Italian Court of Cassation, decision of January 25, 1971, *apud* Gh. Ivan, M.-C. Ivan, *op. cit.*, p. 10.

²⁰ A. Boroi, *Infrațiuni contra vieții*, All Beck Publishing House, Bucharest, 1999, p. 114.

²¹ G. Levasseur, *Non-assistance à personne en péril extrait du “Cours de droit penal special” (Les cours de droit. Paris 1967-1968)*, ledroitcriminel.free.fr,

²² https://fr.wikipedia.org/wiki/Non-assistance_%C3%A0_personne_en_danger#Concept_en_droit C3.A7a is, consulted on 1.09.2024.

²³ <http://www.legislationline.org/documents/section/criminal-codes>, consulted on 1.09.2024.

socialisation of human relations, which does not allow indifference to the fate of others. The act of helping a person in danger creates the responsibility of each individual to do.²⁴

The punishment varies between five years' imprisonment and a fine of €75,000. The offender is also disqualified from certain rights, consisting in the loss of electoral rights (Articles 223-16 of the French Criminal Code).

Paragraph 2 – *'Any person who voluntarily refrains from rendering to a person in distress assistance which he could, without risk to himself or to third persons, have rendered either by his own action or by giving aid, shall be liable to the same penalty.'*

In French doctrine, it has been stated that anyone who can prevent by his immediate action, without risk to himself or to third parties, and voluntarily abstains, is a crime against the physical integrity of the person. It is important to remember that this crime punishes conduct (inaction or inaction) more than the result²⁵. The withholding of assistance must be deliberate, which means that a person could not be held liable if their failure to assist was simply due to negligence or error.²⁶

It has also been argued that this crime is similar to the crime of endangerment, in that they share the notion of risk, differing in that the offender does not create the danger, but inaction may simply contribute to worsening the consequences for the victim.²⁷

Also doctrinal, it is stated that art. 223-6, paragraph 2 of the Criminal Code, does not define what is the violated risk that imposes the obligation to do. This definition has been the work of doctrine and case law, which recognises that any danger in which there is a third party does not imply an obligation to render assistance. To grant assistance on the part of the debtor, the injured person must be in the presence of a real threat (A) as well as an imminent and constant risk (B)²⁸. In French law, the reality of the danger presupposes the actual threat of harm and it does not matter that this threat is not realised²⁹. It is also argued that this condition is non-existent in French law. On the subject.³⁰

Clearly, danger can come from any source. It can come from an intentional or unintentional crime, natural disaster or accident, assault, violence, accident, due to an action of the victim or even the offender³¹. The jurisprudence of the French Court of Justice has recognised the obligation to support the offender if he or she is also in danger.

²⁴ http://www.juripole.fr/Juripole_etudiant/html_bertin/Penal13.html, consulted on 1.09.2024.

²⁵ A-B. Maître, *La non assistance à personne en danger et l'omission de porter secours à personne en peril*, <http://www.legavox.fr/blog/maître-anthony-bem/assistance-personne-danger-omission-porter-10100.htm>.

²⁶ G. Levasseur (1967-1968). *op. cit.*

²⁷ Bourges, June 21, 1990, Dr. penal 1991, Comm, 135, *apud*, http://www.juripole.fr/Juripole_etudiant/html_bertin/Penal13.html, consulted on 1.09.2024.

²⁸ http://www.juripole.fr/Juripole_etudiant/html_bertin/Penal13.html, consulted on 1.09.2024.

²⁹ W-B. Amar, N. Karray, H. Siala, M. Zribi, H. Lebkem, Z. Hammami, S. Maataoug, „Réflexions sur la responsabilité médicale pénale pour non-assistance à personne en péril dans le contexte de la pandémie COVID-19, Penal medical liability for culpable abstention in the context of the COVID-19 Pandemic”, *La Revue de Médecine Légale*, Volume 12, Issue 3, September 2021, pp. 136-140, <https://www.sciencedirect.com/science/article/pii/S187865292100047X?via%3Dihub>, <https://doi.org/10.1016/j.medleg.2021.05.001>.

³⁰ S. Fantoni-Quinton, C. Manaouil, Verkindt P.-Y., P. Frimat, *La responsabilité pénale des médecins du travail: un répertoire renouvelé ?* Archives des Maladies Professionnelles et de l'Environnement, 2011, 72 (1) : 4-12, <https://www.sciencedirect.com/science/article/abs/pii/S1775878510005266>, consulted on 1.09.2024.

³¹ Magnol, Crim. May 31, 1948, JCP 1949 II. 4945, http://www.juripole.fr/Juripole_etudiant/html_bertin/Penal13.html, consulted on 1.09.2024.

The perpetrator of the assault also has an obligation to save his or her own victim³², which is reminiscent of Article 489 of the 1936 Romanian Criminal Code, which criminalised the crime of failure to render assistance and even punished a driver who, after causing an accident, fails to stop.

In paragraph 3 of Article 223-6, the legislator has chosen to punish the aggravated version of the offence by increasing the penalty *‘to seven years’ imprisonment and a fine of 100,000 euros when the offence against the bodily integrity of the person referred to in the first paragraph is committed against a minor under the age of fifteen years or when the person at risk referred to in the second paragraph is a minor under the age of fifteen years’*. This type of variant provided for in French criminal law underlines the importance of the protection of children and recognises the seriousness of offences committed against them. The legislator wishes to provide additional protection for this category, considering that they do not have the necessary capacity to defend themselves and fully understand the risks and consequences of abusive actions. Harsh punishments have a deterrent effect and can reduce the incidence of these crimes. Increased penalties for offences against minors reflect societal values and norms that attach particular importance to the protection of children. Society sees the future in children and has a duty to protect them. At the same time, most international conventions on the rights of the child require Member States to adopt measures to protect minors from violence and abuse. Increasing penalties for crimes against minors is a measure to comply with these international standards.

Constitutive elements of the offence are:

The *object* of the offence is to protect the life and physical integrity of persons by imposing a legal obligation to intervene when possible, without significant risk. Unlike the offence provided for in Romanian law, the material object of the offence provided for in the French Criminal Code is the body of the person whose life, health or bodily integrity is endangered.

The *active subject* can be any person, regardless of their capacity, sex, age, profession, etc. It is considered a dangerous offence, and the punishment applies to any perpetrator who has remained passive in a dangerous situation in which a person is. If the perpetrator was not aware of the existence of a risk or the seriousness of the danger, he will not be held criminally liable³³. The *passive subject* can also be any person who is in danger. The person in danger must be alive, a dead person can no longer be in danger³⁴. As a precautionary measure, a person who has shown indifference to the fate of others cannot cunningly escape law enforcement. The criminal court often requires the defendant to prove that he knew that the victim was dead when he failed to render aid and that the state of danger no longer existed.³⁵

Compared to Romanian criminal law, where the material element of the offence provided for in Article 203 of the Criminal Code is realised by omission (failure to render assistance and failure to notify the authorities), the material element of the objective side

³² Cass Crim, January 21, 1954, JCP 1954 ed. G. II, 8050, note, P.-A. Pageaud,, http://www.juripole.fr/Juripole_etudiant/html_bertin/Penal13.html, consulted on 1.09.2024.

³³ Ibid.

³⁴ Ibid.

³⁵ Montpellier, February 17, 1953, JCP 1953. II. 7499, http://www.juripole.fr/Juripole_etudiant/html_bertin/Penal13.html, consulted on 1.09.2024.

of the French legislation consists in the act of abstention. Abstention is punishable only if it is voluntary, e.g. the perpetrator was aware of the danger and yet consciously decided to abstain.

As in Romanian law, this offence must cumulatively meet certain conditions: a person in danger (by danger we mean the physical or moral health of a living person. Consequently, a fetus or an animal that has no personality legally are not protected³⁶). The danger must be of a serious and immediate nature and; it can arise from an illness, following an accident, negligence, etc., it must be so serious that the person cannot save himself.

Cases of non-punishment. According to Article 122-7 of the French Criminal Code, a person who, faced with a present or imminent danger to himself, third parties or property, commits an act necessary to protect his person or property is not criminally liable, unless the means used are disproportionate to the gravity of the threat.

4. Italian legislation

The Italian Criminal Code criminalizes crimes against the person in Book II, Title XII, Chapter I – Crimes against life and personal safety. The crime of leaving a person in distress without assistance is found in art. 593 *Neglect to render assistance*, thus, (1) *whoever finds abandoned or lost a minor child under 10 years of age or another person incapable of taking care of himself/herself due to mental or physical illness, old age or other reasons, fails to notify the authorities, shall be punished by imprisonment of up to one year or a fine of up to €2,500. (2) The same punishment shall be imposed on anyone who, on finding a human body, which is or appears not to be alive, or a person injured or otherwise in danger, fails to render the necessary assistance or fails to immediately notify the authorities.*

In paragraph 3 the legislator has included the aggravated form of the offence: *If this conduct results in injury to the person, the punishment shall be increased. If it leads to the death of the person, the punishment is doubled.*

It should be noted that the hypothesis of the legal case mentioned above is represented by the special relationship between the active and passive subject of the offence and that the rule of qualification of the offence is the verb ‘to find’. The Supreme Court (of Italy) has stated the following principle of law: for the offence to be unlawful there must be direct physical contact through sensory organs, mere news waves that someone is in danger in a remote place do not qualify as a possible offence.³⁷

In Italian law, negligence in rendering aid is a crime against the person, and more specifically against life. It is an offence of omission, by which the legislature intended to punish the failure to perform an action considered to be an obligation, regardless of whether or not serious consequences result from that omission.

The Italian criminal literature³⁸ states that as early as Plato’s Laws, there were numerous obligations to rescue, with penalties for those who did not respect them and rewards for those who had compliant conduct, also the criminal law of the Church

³⁶ http://www.juripole.fr/Juripole_etudiant/html_bertin/Penal13.html, consulted on 1.09.2024.

³⁷ Decision No. 11,670 of November 17, 1987, Criminal Section I, <http://www.overlex.com/leggiarticol.asp?id=1736>, consulted on 1.09.2024.

³⁸ F. Mantovani, *Criminal Law. Parte speciale I — Delitti contro la persona*, CEDAM, Roma, 2013, p. 234.

provided obligations to help if a person is found injured, unable to save himself.

The criminalisation provided for in Article 593 of the Criminal Code, in the chapter on offences against life and personal safety, is an expression of the principle of solidarity, a general obligation to provide assistance, direct or indirect, which has been introduced into criminal law since 1930.

This principle is played out in many ways over the centuries, referring only to the Constitution of the Italian Republic, Article 2, where in addition to recognising fundamental human rights, it also requires the fulfilment of binding political, economic and social duties.

Article 593 of the Criminal Code provides for two distinct cases:

- in the first paragraph, the omission consists in the failure to immediately notify the authorities by the person who has found abandoned or lost a minor child up to the age of 10, or other persons who cannot manage on their own;

- the second paragraph of this article is subject to a criminal omission, which consists in assisting or notifying the authority if a human body has been found, which appears lifeless or an injured person in need of assistance.

The subjective element of the offence is the general intent, and therefore must be the awareness and volition of all the elements provided by the incriminating circumstances, including the capacity to take action.

The legal interest protected is human life, as well as the health and integrity of the natural person in distress.

The material element of the offence consists in:

- the duty to notify the competent authorities that a minor child up to the age of 10 years has been found abandoned or lost; or a person incapable of caring for himself/herself by reason of mental or physical illness, old age or other reasons;

- the duty to render necessary assistance to an injured person in distress, or notifying the authorities if a human body has been found, which is or appears not to be alive.

The aggravating circumstances of this criminal provision derive from any bodily injury; the penalty is higher under Article 64 of the Criminal Code if the omission results in injury, while in the case of death of the person in danger the penalty is doubled.

The two alternatives, providing assistance and notifying the authorities, are not obligatory at the same time, as the obligation to notify the authorities arises if effective assistance cannot be provided. If a person is unable to fulfil these obligations due to age or conditions, they cease.

There are clearly different scopes of application of the two provisions, as well as the intention of the criminal law to enhance the protection of life and personal safety in a high-risk sector, such as road traffic.

The normative provision was amended by Law no. 72 of April 9, 2003, tightening the punitive treatment and changing the court's jurisdiction, as follows: 'punishable by imprisonment of up to three months or a fine of up to six hundred thousand lire' was replaced by 'punishable by imprisonment of up to one year or a fine of up to 2500 euro'.

The active subject of this offence can be any person, including the driver involved in a road accident in which someone has suffered physical injury. The rule tends to extend the scope of the obligation to render assistance. Title V Rules of conduct,

Article 189 of the Road Traffic Code (approved by Legislative Decree No. 285/30.04.1992³⁹, in force since 1 January 1993, amended and updated), paragraphs 7 and 8, requires the road user to behave in two ways, on the one hand, to stop and allow other vehicles to move under optimal conditions, and, on the other hand, to provide the necessary assistance to the injured person, depending on the injuries resulting from the accident. The offence is punishable by a driving license suspension of up to five years and, depending on the seriousness of the offence, by imprisonment alternating with a criminal fine.

The driver is not exonerated on the grounds of lack of medical knowledge, he/she must call for professional assistance, ensure that the victims are transported to hospital by his/her own means or with the help of third parties, ensure that non-transportable victims are not injured by other vehicles, etc.

Case law has made it clear that the obligation to provide healthcare must be carried out immediately and that the activities of providing healthcare must be specific, not rushed or perfunctory.⁴⁰

Doctrinally, it has been asserted that the provisions of Article 593 of the Criminal Code do not apply against the perpetrators of dangerous situations, such as murder or negligence, because these acts are punishable by murder or bodily injury. The obligation of aid under Art. 593 is therefore filial, addressed only to those who did not intentionally or negligently cause the dangerous situation, which does not impose the obligation and is not the subject of the criminal priority.⁴¹

In the case of this offence, the prosecution is initiated ex officio and the court with jurisdiction to try the offence is a single-judge Tribunal.

5. Conclusions

The crime of abandoning a person in distress reflects an essential norm of behaviour in society, promoting solidarity and individual responsibility. By criminalizing this act, national laws underline the importance of intervening in critical situations to protect the lives and health of persons at risk.

In the Romanian legislation, this regulation emphasises the importance of mutual help and social responsibility by penalising negligence towards people in critical situations. Moreover, the severity of the punishment increases according to the consequences of failing to help. By including this act in the Penal Code, Romanian law emphasises the importance of intervention and help in critical situations, highlighting the moral and legal obligation of every citizen to intervene when possible without endangering his or her life. Failure to render assistance not only violates this moral obligation but also constitutes a criminal offence. The severity of the penalty may increase, depending on the consequences of the failure to help. For example, if the failure to render assistance leads to a worsening of the condition of the person at risk or even to their death, the perpetrator may be punished more severely and the judge may take

³⁹ <http://www.aci.it/i-servizi/normative/codice-della-strada.html>, consulted on 1.09.2024.

⁴⁰ F. Delvino, G. Napolitano, *Nuovo Codice della strada commentato*, Maggioli Editore, p. 242, http://www.asaps.it/8445-spunti_di_riflessione_sull_omissione_di_soccorso_alla_luce_della_sentenza__n_339.html#_ftn1.

⁴¹ F. Mantovani, *op. cit.*, pp. 237 - 238.

aggravating circumstances into account.

Thus, this regulation is intended to promote social responsibility and mutual help, by penalising negligence and indifference towards people in critical situations, and thus contributing to the protection of the life and physical integrity of individuals.

French law encourages active intervention to prevent injury or to help a person in danger. It provides clear penalties for those who could have helped without significant risk but fail to do so. This principle reflects a humanitarian approach and a social responsibility, similar to that regulated in Romanian law, but with more severe penalties for failure to fulfil this moral and legal obligation.

In addition, the increase in the penalty provided for in paragraph 3, where the offence is committed against a minor under the age of fifteen or where the person at risk is a minor under the age of fifteen, is a measure designed to offer greater protection to this vulnerable category, to discourage offending and to reflect social values that prioritise the well-being and safety of children.

Both French and Romanian legislation emphasise the importance of mutual help and social responsibility. However, the significant difference in the severity of sanctions reflects a stricter approach in French legislation towards the failure to fulfil this moral and legal obligation. This can be interpreted as an attempt to more strongly discourage negligent behaviour and encourage active intervention in critical situations. Both French and Romanian law promote social responsibility and the protection of life and bodily integrity by penalising failure to render aid to a person in distress, however, the more severe penalties provided under French law reflect a stronger commitment to this humanitarian principle.

Italian law imposes a clear responsibility to assist persons in distress and provides sanctions for failure to fulfil this obligation. This reflects a moral and social obligation to intervene in critical situations to protect the lives and integrity of persons in distress. The increase in penalties in cases where the omission leads to injury or death underlines the seriousness of the act and the importance of individual responsibility.

In conclusion, the French, Romanian and Italian laws share a common aim: to protect the lives and integrity of persons by imposing a legal responsibility to render assistance to those in danger. Although there are variations in the severity of sanctions, all these laws reflect a firm commitment to humanitarian principles and social responsibility.

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