

# Considerations Regarding the Crime of Determining or Facilitating the Suicide<sup>1</sup>

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## **Abstract**

*Opposable erga omnes, the right to life is an absolute and intangible right of the human being and is protected by criminal law in the interest of the whole society, including for the purpose of ensuring human coexistence. In other words, the interest of the criminal law is to impose on all citizens the obligation to respect the life of each individual, to respect the human desire to live. Seen as an attempt on the person's life, the act of determining or facilitating suicide could not remain outside the incrimination in the Criminal Code as a crime. The present paper is a study of this incrimination from the perspective of the defense of the right to life.*

**Keywords:** *determining or facilitating of the suicide, incrimination, Criminal Code, right to life.*

**JEL Classification:** K14

## **1. About the right to life in opposition to the suicide**

The fundamental human right to life is recognized and guaranteed by numerous legal international instruments, including the Universal Declaration of Human Rights<sup>3</sup>, which stipulates in article 3 that „every human being has the right to life, liberty and the security of his person” or the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>4</sup>, which provides in article 2 that „the right to life of any person is protected by law. Death shall not be willfully caused to any person, except in execution of a capital sentence passed by a court when the offence is sanctioned by such punishment by law”. Seeking to protect the right to life and being one of the signatory states of these documents, our country sanctions through the criminal legislation in force the acts that constitute a threat to the life of the human being.

Suicide is a fairly common phenomenon on the world map at all times. A statistical study<sup>5</sup> shows that suicides represent 29% of the category of violent deaths, that most cases are registered among men (82% men; 18% women), regardless of whether we are talking about the urban or rural environment, that women are more prone to attempt than men. Also, according to the same study, suicide by hanging constitutes the highest share among the ways of committing (78%), followed by voluntary intoxication (8%) and precipitation (6%).

Suicide cannot be considered otherwise than an extreme form of self-harm, shocking on an emotional level either by the brutal way in which it was committed, or by the causes that led the victim to such an action. Some states<sup>6</sup> criminalize attempted suicide in criminal law.

As a particular type of murder, suicide constitutes self-harm and not a violation of the right to life, which is why it is not likely to cause legal conflicts.

How could it not be possible to interpret article 2 of the European Convention on Human Rights in the sense of creating a right to self-determination so that a person can choose between life and death, based on this consideration, we can firmly state that the death of a person with her consent

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<sup>1</sup> This paper research is carried out with love, pride and respect in honor of a wonderful man to whom I owe my existence on this earth, a man who fought the Covid-19 disease for two and a half months, enduring an unimaginable suffering, taken to the extreme: engineer Mircea Nour, my father and (in November 2021, still) the only Romanian engineer authorized to project lifting installations for a nuclear power plant and to verify the preparation of such projects in the nuclear field.

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<sup>3</sup> Adopted by UN General Assembly on December 10, 1948.

<sup>4</sup> Adopted at Rome, on November 4, 1950.

<sup>5</sup> Report on the activity of the forensic medicine network in 2013 - National Institute of Forensic Medicine "Mina Minovici". Bucharest. Available on: [www.legmed.ro](http://www.legmed.ro)

<sup>6</sup> Article 309, the Brunei Penal Code, adopted on 01.05.1952. Available on: [http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/Cap.22a.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/Cap.22a.pdf); article 309; the Indian Penal Code, adopted on 06.10.1860. Available on: <https://www.indiankanoon.org/doc/1569253/>.

is inadmissible<sup>7</sup>.

Therefore, what is criminalized in the case of the crime of determining or facilitating suicide is the perpetrator's contribution to the deed committed by the victim, since, through his action, the active subject affected the right to life. Most of the time, self-harm occurs against the background of pre-existing mental conditions, exacerbated in a moment of desperation, the person acting without realizing the meaning and inestimable value of life.

A person who dies by suicide or attempts to do so does not always want to die, but chooses this way considering that it is the only way to deal with the difficult situations he is going through or the feelings he is experiencing. As a rule, those who end up taking their own lives are hopeless, helpless, alone and in what they perceive to be hopeless situations. So, the cases of those who end their lives in the context of a psychotic episode, for example, are rarer. Causes of suicide include: family history of suicidal behavior, extremely serious physical or mental illness, chemical addiction, alcohol, death of a close relative, divorce or other major life changes, family violence, social isolation, absence the motivation to live, hopelessness, helplessness, job loss, depression, anxiety or other mental or emotional disorders. In the field of forensic psychology, a victim can be "any person who directly or indirectly suffers physical, material or moral consequences of a criminal action or inaction"<sup>8</sup>. In this context, the legislator criminalized both the interference of another person for the purpose of total mental destabilization of the victim and in motivating him to take her own life, as well as the support for committing the suicidal act.

## 2. Research methods

"The research represents an analytical, conceptual and statutory approach to a complex issue, [...] much debated at international level"<sup>9</sup>.

The objective of the study is the analysis of the offence of determining or facilitating the suicide „through the new vision of legislation in force and through the need to prevent and combat such offences under criminal law”.

This paper is based on a thorough scientific research, with particular importance both theoretically and practically, since it contributes to the development of legal doctrine and use in practice the ideas expressed<sup>10</sup>. “Based on the problems above, the specifics of this research, the author implements the normative legal research which is supported by the research method of the normative law”<sup>11</sup>, for obtaining a systematic analyze of this topic. All informations are selected and processed “from literature, cases and reports [...] in order to explain, states the fact clearly in addition to avoid using irrelevant data”<sup>12</sup>.

“This type of study was a normative juridical with the nature of this research is analytical descriptive”<sup>13</sup>. “The personal contribution is reflected throughout the entire work and highlights the way in which the concepts used were analyzed, through how reasoned opinions were submitted to

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<sup>7</sup> To see in this regard, Răducanu, R., *Protection of the right to life - a fundamental human right - through criminal norms*. Available at: [http://www.uab.ro/reviste\\_recugnose/reviste\\_drept/annales\\_10\\_2007/raducanu\\_ro.pdf](http://www.uab.ro/reviste_recugnose/reviste_drept/annales_10_2007/raducanu_ro.pdf).

<sup>8</sup> T. Bogdan and collaborators, *Human behavior in the judicial process*, M.I., Cinematografic Editorial Service, Bucharest, 1983, p. 93.

<sup>9</sup> Nour, A. (2020). *Euthanasia – A Right of the Human Being or a Crime against Humanity?*, „Scholars International Journal of Law, Crime and Justice”, Dubai: Scholars Middle East Publisher. 3(5), 141. DOI: 10.36348/sijlcj.2020.v03i05.001. Available on <https://saudijournals.com/sijlcj>.

<sup>10</sup> Andrada Nour, *The Crime of Traffic of Influence in the New Incrimination Formula*, „Perspectives of Law and Public Administration”, Volume 8, Issue 2, December 2019, ADJURIS – International Academic Publisher, p. 358, available at <http://www.adjuris.ro/revista/an8nr2.html>.

<sup>11</sup> Mediheryanto, Rumengan, J., Fadlan (2020). *Analysis of Juridical Legal Protection of Women Reproductive Health in Family Planning: A Research Study in Batam City*, „Scholars International Journal of Law, Crime and Justice”, Dubai: Scholars Middle East Publisher. 3(7), 209. DOI: 10.36348/sijlcj.2020.v03i07.001. Available on <https://saudijournals.com/sijlcj>.

<sup>12</sup> Sakharina, I.K., Daud, A.A. (2020). *Abolition of Child Marriage Practices in Indonesia According to the United Nations Convention on the Rights of the Child*. „Scholars International Journal of Law, Crime and Justice”, Dubai: Scholars Middle East Publisher. 3(6), 203. DOI: 10.36348/sijlcj.2020.v03i06.009. Available on <https://saudijournals.com/sijlcj>.

<sup>13</sup> Susetyani, R., Muryanto, Y.T., Pujiono S.H., M.H. (2020). *The Implementation of the Decision of Kpu in Relation to the Objection of Business Actors Due to Tender Conspiracy Case*. „Scholars International Journal of Law, Crime and Justice”, Dubai: Scholars Middle East Publisher. 3(2), 50. DOI: 10.36348/sijlcj.2020.v03i02.001. Available on <https://saudijournals.com/sijlcj>.

doctrines, by personal opinions and conclusions."<sup>14</sup>.

### 3. The crime of determining or facilitating suicide in the light of the current Criminal Code

Undoubtedly, determining or facilitating suicide is an extremely serious act, an attempt on a person's life, and suicide not being regulated as a crime, since the criminal law does not criminalize the social relations of the individual with his own person, the provisions of the article 191 of the Penal Code they cannot be seen as a form of participation in suicide. "As criminal participation can only be conceived for a main punishable act, the determination to commit suicide and the facilitation of suicide not being able to constitute acts of instigation and complicity in the sense of the criminal law, but presenting an obvious social danger - as they affect the life of another person -, have were criminalized separately, as an independent crime"<sup>15</sup>.

The attempt on the victim's life does not materialize directly, but through the acts of determining or facilitating the suicide, and what the legislator sanctions is precisely this interference by the perpetrator in the sphere of social relations that aim to protect the person's life.

Thus, the Criminal Code incriminates in article 191 the crime of determining or facilitating suicide as follows:

(1) The act of causing or facilitating the suicide of a person, if the suicide has occurred, is punishable by imprisonment from 3 to 7 years.

(2) When the act provided for in para. (1) was committed against a minor aged between 13 and 18 years or against a person with diminished discernment, the penalty is imprisonment from 5 to 10 years.

(3) Determining or facilitating suicide, committed against a minor who has not reached the age of 13 or against a person who could not realize the consequences of his actions or inactions or could not control them, if the suicide took place, is punishable by imprisonment from 10 to 20 years and the prohibition of the exercise of certain rights.

(4) If the acts of determination or facilitation provided for in para. (1)-(3) were followed by a suicide attempt, the special punishment limits are reduced by half.

Unfortunately, the legislator omitted the definition of the phrase "diminished discernment". For a uniform practice, we propose the intervention of the legislator in the direction of clarifying the meaning of the terminology used. At the same time, we subscribe to the doctrinal opinion according to which "a person is in such a state when she has real difficulties in understanding or acting, but without being irresponsible in the sense of the criminal law"<sup>16</sup>.

Analyzing the second aggravated variant, we note that, being about categories of extremely vulnerable people, the legislator sanctions the committing of the act with the punishment provided by law for the crime of murder, provided for by article 188 of the Criminal Code. Unfortunately, however, when the act is committed with the realization of any of the qualifying circumstances stipulated in the text of article 189 of the Penal Code, the perpetrator will be punished with the same penalty. By way of consequence, by law ferenda, we consider that it is necessary to criminalize the act of determining or facilitating the suicide committed in the manner provided in article 191 para. (3) directly as a crime of murder or qualified murder, as the case may be.

The crime of determining or facilitating suicide has as a special legal object the social relations related to the person's right to life, and as a material object - the body of the person who died or who tried to commit suicide. The act of taking life belongs exclusively to the passive subject of this crime, but not infrequently, it is the result of the actions of other people, actions that materialized through real attacks on the person's health, honor or dignity. That is why, in our opinion, this crime could be

<sup>14</sup> Andrada Nour, *op. cit.*, (*The Crime of Traffic of Influence...*), p. 358, available at <http://www.adjuris.ro/revista/an8nr2.html>.

<sup>15</sup> Ilie Pascu, Vasile Dobrinou, Mihai Adrian Hotca, Ioan Chiş, Mihaela Gorunescu, Costică Păun, Maxim Dobrinou, Norel Neagu, Mircea Constantin Sinescu, *New Criminal Code commented. Special part*, vol. II, 3<sup>rd</sup> edition revised and added, Universul Juridic Publishing House, Bucharest, 2016, p. 38.

<sup>16</sup> *Ibid*, p. 40.

considered as susceptible to having a multiple special legal object, in the cases above, which could even be the health, honor or dignity of the passive subject.

Any physical person who can be criminally liable can be an active subject of this crime. Criminal participation is possible in all its forms.

The passive subject can be any person on whom acts of determination or facilitation of suicide are exercised. Most frequently, the passive subjects of this offense are certain vulnerable categories, namely minors, women - victims of family violence or soldiers. The legislator established in the case of aggravated variants that the active subject is a minor, a person with diminished discernment or an irresponsible person unable to realize his act or who could not control his actions.

We consider that the crime can be committed both by action and by inaction (the typical case being that of the inaction of a person in whose care the minor would be, but who does not respect her duty).

The result of the crime, namely the victim's suicide or attempted suicide, although it is exclusively her work, nevertheless occurred as a result of the perpetrator's action. Therefore, the relationship of the perpetrator with the result of his act is indirect. We consider it is necessary to specify the fact that acts of determining or facilitating suicide are likely to take place over a longer period of time, against the background of conflicts between the perpetrator and the victim. Likewise, we cannot exclude the existence of witnesses who passively assist such events, but whose liability cannot be held from a criminal point of view, but, at most, from a moral point of view.

In the hypothesis that the suicide remains in the attempt phase, since the material element of this offence must be analyzed in relation to the victim's action, it is very important to investigate the real intention of the passive subject and whether, perhaps, she only simulated the attempt. Therefore, for the existence of the offense provided for in article 191 of the Penal Code, it is mandatory that the passive subject undertakes everything to commit suicide, and if this result does not occur, it is necessary that it does not occur independently of the victim's will. On the other hand, the situation can also arise in which the passive subject leaves a note in which it is written that the decision belongs exclusively to him and that no one is to blame. We believe that even in such cases, it must be thoroughly investigated whether in reality there was no person who determined or facilitated the victim's suicide. So, in our opinion, the note left by a person before ending his days should not be a decisive element in excluding the possibility of the existence of the offence provided for in article 191 of the Penal Code. At the same time, we believe that the causes that led the victim to resort to suicide must be very carefully elucidated and analyzed, in this way being able to be discovered elements that reveal a potential active subject of this crime. Also, in the hypothesis that there would be two suicides, and one of them would survive, it must be carefully investigated whether the latter did not just simulate the suicidal act in order to induce the other to commit suicide.

There are also situations when the victim's decision to resort to such a gesture is externalized in advance, but not in all cases it follows with certainty that this outcome will be reached. Very often, however, the victim hides this decision.

Although suicide is an act of conscious self-suppression of life, in reality it can be an accident or even a criminal act, especially since all three ways result in a violent death. It should be emphasized that both the hypothesis in which a person in a state of unconsciousness ends his days, as well as the one in which death occurs as a result of the negligence of the victim, cannot be categorized as suicide cases. Therefore, in order to be able to make a correct legal classification of the fact, it is necessary to carry out an extremely rigorous research and analysis of the causes and reasons that determined such an outcome.

We emphasize once again that when the victim is under the influence of narcotics or suffers from certain mental illnesses or in the event that she is threatened with death or forced to take her own life, the legal classification of the act will be the crime of murder, and not the determining or facilitating suicide.

Determining suicide can be done verbally or in writing, by exhortating or persuading the victim in this regard, it being irrelevant whether the idea of suicide belongs to the victim or to another person. What matters is that the decision to commit suicide is made by the victim as a result of the

perpetrator's action. The determination can also be made by requests, misleading, orders, threats, distorted or exaggerated reports, living conditions at the limit of bearability. We emphasize, however, that these methods of determination must be distinguished from the method of coercion, as a result of which the victim is forced to resort to suicide, having no alternative or, in other words, being deprived of the possibility to decide for herself. In the case of suicide due to coercion, the victim no longer having the opportunity to choose between life and death, the deed will no longer be circumscribed to the crime described by article 191 of the Penal Code, but it will constitute a murder<sup>17</sup>.

Facilitation of suicide can materialize through any actions to support the passive subject in realizing his decision to end his days, being irrelevant if the decision belongs to the victim or if it was previously determined by another person. Therefore, the facilitation may consist in procuring the necessary means to carry out the suicidal act, in removing obstacles, in explaining how the weapon should be used or in any advice or suggestions regarding the procedure having the effect of suppressing life.

We believe that determining or facilitating suicide can also take place through electronic means of communication. The virtual space represents a real danger in this sense, constituting a favorable environment for carrying out such actions, for example, on the background of the existence of games that, in the end, aim at the suicide of the player.

We express our opinion that the public justification of suicide through messages or in any way, which would promote the recognition of the suicidal act as just or worthy of following, should be punished as severely as possible by criminal legislation.

The immediate consequence consists in the death of the victim or in her attempt to commit suicide, and for the existence of the crime it is necessary to establish the causal link between the action of the active subject of determining or facilitating the suicide and the result produced. In the hypothesis that the suicide or suicide attempt would have taken place, but would not have been due to the action of the perpetrator, but to other causes, then the provisions of article 191 of the Penal Code will not be incident. So, it cannot be about an unpredictable and excessive reaction of the victim, but about a decision determined exclusively by the determination or facilitation actions of the perpetrator, a decision taken, most likely, on the background of a pre-existing psycho-emotional impairment aspects of the victim, in which external social factors also play an important role.

Since the legislator does not distinguish in the criminalization norm, we are of the opinion that determining or facilitating suicide is a crime that can be committed both with direct intent and with indirect intent.

The crime is consummated when the suicide or attempted suicide takes place. Acts of preparation and attempt are possible, but not punishable.

Regarding the sanctioning treatment, we note that it is provided differently "according to how the acts were committed with regard to a person with unaltered discernment, with regard to a person with diminished discernment or a person lacking discernment, in the latter case not being able to be about a decision made by the person in question, and the deed being sanctioned in the same way as the crime of murder"<sup>18</sup>.

#### **4. Relevant national jurisprudence in the matter of the offence of determining or facilitating suicide**

“Violence in the family is manifested especially between parents, children witnessing such events, which will negatively influence their way of thinking and feeling, development, behavior towards other people throughout life. In addition, it was found that, in most cases, violence against

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<sup>17</sup> To see in this regard, High Court of Cassation and Justice, Criminal Section, Decision no. 6567/2004 of December 8, 2002, in „Revista de Drept Penal” no. 1/2006, p. 158.

<sup>18</sup> Ilie Pascu, Vasile Dobrinioiu, Mihai Adrian Hotca, Ioan Chiş, Mihaela Gorunescu, Costică Păun, Maxim Dobrinioiu, Norel Neagu, Mircea Constantin Sinescu, *op. cit.*, pp. 38-39.

the mother will be followed by violence against the child”<sup>19</sup>.

As we have shown previously, the decision of the passive subject to commit the suicidal act following the perpetrator's actions of determination or facilitation is taken on the background of the existence of psycho-affective impairments, social factors also having a major role in this regard.

In this sense, we will present in the following a shocking case that happened in a town in Bihor, 5 years ago, for which the Court issued a judgment of conviction<sup>20</sup> on July 28, 2021, regarding the defendant XXX sent to court under the aspect of committing the crime of determining or facilitating suicide provided by article 191 para. (1) of the Penal Code, the crime of domestic violence provided for by article 199 related to article 193 para. (2) of the Penal Code with the application of article 35 para. (1) of the Penal Code, three crimes of maltreatment applied to the minor provided by article 197 of the Penal Code, all with the application of article 38 para. (1) of the Penal Code. In fact, it was held by the notification act in the charge of the defendant XXX:

**1.** Regarding the crime of determining or facilitating suicide provided by article 191 para. (1) of the Penal Code the indictment states:

Between February and July 24, 2017, through systematic, almost daily acts of mental violence (insults and threats) and physical violence (beatings with fists, legs, cudgel and the fire hook, with the consequence of causing serious bodily injuries: hematomas and excoriations, rib and arm fractures), the defendant determined the victim YY to commit suicide by hanging in his home, on July 24, 2017, a consequence that the defendant knew right from the victim's statements but which he accepted, continuing the aggressions on her;

**2.** Regarding the crime of domestic violence provided for by article 199 related to article 193 para. (2) of the Penal Code with the application of article 35 para. (1) of the Penal Code, it is noted that:

Between July 4 and 24, 2017, he inflicted several blows on the victim YY, on different days but based on the same criminal resolution, causing the mentioned bodily injuries (some up to 7 days before the death, others on July 4, 2017 and others one day before death), as follows:

- between July 3-4, 2017, XXX hit his concubine YY with a hard body, causing a fracture of the 1/3 of the left distal ulnar diaphysis, which would have required, in case of survival, a number of 30-35 days of medical care;

- on July 20, 2017 (date of witness ZZ's son's party), suspect XXX hit his concubine YY multiple times, with fists and hard blunt objects (cudgel and so on), over the head, body and limbs, causing bodily injuries on the head (contusion wound, ecchymoses, hematomas, blood infiltrates), trunk and limbs (ecchymoses, excoriated plaques) which would have required 7-8 days of medical care in case of survival;

**3.** With regard to the 3 crimes of maltreatment applied to the minor provided by article 197 of the Penal Code with the application of article 38 para. (1) of the Penal Code, it is noted in the indictment:

- between February and July 24, 2017, the defendant endangered the intellectual and moral development of his 3 minor children (BB, currently 16 years old, CC, 14 years old and DD, 13 years old), both through acts of mental violence (insults and threats) and physical violence (beating with the palm and wooden spoon) exercised on the children, as well as through other measures and treatments (systematic and violent beatings applied to the children's mother, in their presence;

- preventing minors from having a normal social life, given that on July 20, 2017, after beatings during the day, the minor had to stay at home so that their mother would not be beaten, the defendant then beat her victim, so that the other two children had to come home crying from the children's party where they were;

- committing other acts of violence in the presence of minors, unsuitable for their intellectual and moral development, such as the defendant's suicide attempt in February 2017, when he told the

<sup>19</sup> Andrada Nour, *Aspects regarding the Protection of Children against any Forms of Violence*, „Scholars International Journal of Law, Crime and Justice”, Dubai: Scholars Middle East Publisher, Volume 3 Issue 9, 2020, p. 299. Available on: <https://saudijournals.com/sijlcj>.

<sup>20</sup> Decision no. 142/2021 of 28.07.2021 pronounced by the Bihor Court, available at: <http://www.rejust.ro/juris/4264649d>.

children that he was going to hang himself and he hanged himself, the minor being forced to save her father by cutting the rope;

- preventing the victim from buying clothes for the children, so the victim had to secretly give to the witness money for clothes).

All these acts leading to the serious intellectual and moral damage of the minors as a result of the fact that their mother hanged herself on July 24, 2017, the children being put in the situation of seeing their mother hanged and intervening to save her, as well as with the consequence that the 3 brothers are separated into two foster families, the eldest daughter currently living with her grandmother (after she turned 18).

Examining the documents and works of the file, both on the basis of the evidence administered by the prosecutor during the criminal investigation phase and during the judicial investigation, the court notes that, on the morning of July 24, 2017, around 07:00, the defendant left home, then returned around 09:00 but did not go home stopping at his neighbor's for a coffee. After the defendant left, while the children were sleeping in the house, the victim YY went out into the yard, took a rope and tied it to the ladder leading to the attic of the house, hanging herself. When the minor BB went out into the yard, around 09:30, he discovered his mother hanging, quickly entered the house and told his sisters what he saw. The three children immediately went out into the yard, after which the minor took a knife, cut the string from their mother's neck, while CC lifted his mother and held her in his arms so she wouldn't fall. Minor BB called the defendant and told him that their mother had hanged herself, the defendant responding to such news with indifference: "So what!". Defendant XXX returned home, and finding the death of the victim, called the single emergency number 112. The court notes that the circumstances of the case consist in the fact that victim YY, aged 47 at the time of death, married the aforementioned PP, relationship which resulted in 2 children, currently adults, namely RR, who lives and works in Belgium, and SS, currently 23 years old, second-year student at the Faculty of Economic Sciences in Cluj. Since her ex-husband was beating her, the victim divorced in 2001 and began a cohabitation relationship with defendant XXX, aged 41 at the time of the events, with whom she moved, initially bringing the two children whom she had them from the previous relationship. The two cohabitants XXX and YY initially lived in his studio apartment, but soon, during 2002, they moved to the defendant's parents' house. The victim's two children from her first marriage stayed with the victim only for a short time, as defendant XXX and his mother misbehaved with the two children, the victim being forced to leave the children in the care of their father. Three children were born from the cohabitation relationship of the victim YY with the defendant XXX: the injured person, currently 16 years old (b. 04.03.2003), the injured person, 14 years old (b. 09.03.2004) and the injured person, aged 13 (born 24.03.2006). The feeling of guilt felt by the victim YY because she had to "abandon" her first two children led her to accept for many years the state of physical and mental terror to which she was subjected by the defendant, precisely in order to remain with whatever price with the 3 children, being a mother concerned with the growth and care of her children, close to them and forced to endure the defendant's physical and mental violence just to stay with the children. In 2015, the victim YY was employed at a shoe factory, but in order to get to work, she had to wake up at 04:00 in the morning, feed the animals in the household, prepare the children for school, and after returning home from work by bus at 17:00, took care of the children, cooked, cleaned, fed the animals and tended the vegetable garden. The relationship between the victim YY and the concubine XXX was a tense one throughout its duration, but the evolution of this relationship experienced a sharp degradation from the beginning of 2017 until the death of the victim YY on July 24, 2017. If in the first years of the relationship, the defendant he was dissatisfied with various small aspects of the cohabitation (for example, the way the victim did a certain activity in the household), later he began to show his jealousy, the tensions intensifying from February 2017 until the victim's death on July 24, 2017. In this last interval, the defendant XXX became much more violent with the victim YY, both physically and mentally, the violence being almost daily and increasingly intense, hitting her with his fists in the stomach, with his legs, with the cudgel and with the fire hook, after from these blows the victim suffered including rib or arm fractures, which required several admissions to the hospital. The systematic and violent beatings to which the victim YY was subjected

by her concubine in the last months of her life in the spring - summer of 2017, correlated with the other psychological pressures to which she was subjected by the defendant (strict control by the defendant, as regards the people she talks to, the way she spends money and so on, reaching the point of banning her from going to work; threats that he will look for her, if she leaves him, that he will kill her or take her children, all these on the background of the emotional vulnerability of the victim who had no relatives in the locality, to move to or to help her, and who had also to leave her first two children in the care of their father), they determined the victim YY not to find another way to escape from this physical and mental terror than by committing suicide on July 24, 2017.

The evolution of this defendant's behavior was well known among the community, the local authorities (including the defendant's mother was the one who asked the mayor to intervene), but these early altercations experienced an uncontrollable progress in diversity, manner of manifestation and gravity, reaching as in the last days these blows of the victim by the defendant to take the form of real fights that led both to the hospitalization of the victim with rib fractures, but also to endangering the normal mental development of the children in whose presence their mother was beaten and humiliated. From the analysis of the evidence administered in the case, it appears that between February and July 24, 2017, defendant XXX endangered the intellectual and moral development of his 3 minor children, both through acts of mental violence (insults and threats) and physical (beatings with the palm and wooden spoon) to them, as well as through other measures and treatments (systematic and violent beatings applied to the children's mother, in their presence; preventing minors from having a normal social life; committing other acts of violence in the presence of minors, unsuitable for their intellectual and moral development; preventing the victim from buying clothes for the children), all completed with the serious intellectual and moral damage of the minors as a result of the fact that their mother hanged herself on July 24, 2017, the children being put in the situation of seeing their mother hanged and to intervene to save her, as well as with the consequence that currently the 3 brothers are separated into two foster families. At the same time, the defendant's self-inflicted violent action in February 2017, when he tried to hang himself in the yard, warning his family about the act he intends to commit and putting the minor BB in the traumatic situation of having to intervene and cut the rope from her father's neck in the middle of the night, constitutes such a measure that seriously endangers the intellectual and moral development of children.

Another traumatic measure for the children was the defendant's violent and degrading behavior towards their mother during 2017, when the defendant stripped their mother and shouted that he was going to write the obscene word "slut" on her back, after which he will take, he rout naked into the street. The three children witnessed all these moments of physical and mental violence towards their mother, who was hiding naked behind the door, humiliated, and they had to intervene through sustained pleas so that their father would not complete his stated plan. At the same time, the systematic violence applied to the mother of the minors and preventing them from having a relatively normal social life, the children being forced to behave all the time in such a way as to prevent the assault of their mother, so that, for example, on July 20, 2017, one of the children had to stay at home to ensure that their mother would not be beaten while the other two children attended a party during which, although they briefly tried to detach themselves from the serious family problems, they found out that their mother is beaten again by their father, the minors being thus forced to go home from the party to defend their mother, also constitute measures and treatments likely to seriously endanger the intellectual and moral development of children.

The same factual elements and real circumstances also result from the minor's statement, which states that they were beaten also because "the rooster was crowing outside and he was sleeping...we knew he would beat us when we didn't listen and didn't go to work on the hay, when picking corn, after wood in the forest, in the household or when I was doing something stupid and making noise..." The mental traumas to which the children were subjected by the defendant are still intense, the witness showing that the minor DD sometimes has nightmares and wakes up crying, the minor also telling her that he cries when he remembers his mother. Particularly conclusive is the statement of the witness LL, the village priest, who showed that he personally observed during 2017 that the three children felt the traumas and conflicts in the family and the children were very affected,



the minor BB even seemed to feel a relief that the mother escaped the ordeal by suicide. And this witness perceived the defendant as a father who was not involved in raising and educating the children.

The court considers the fulfillment of the necessary conditions for engaging in criminal liability under the aspect of committing the offences for which criminal prosecution was ordered in this case. In the case, the causal link between the defendant's actions and the consequences produced, the causing of physical and mental suffering to the injured person, was proven, and from the subjective aspect, it is found that the defendant acted with indirect intent, foreseeing the result of his actions, accepting, at least, its occurrence. The defendant was found guilty and sentenced by the Bihor Court to 15 years with execution. In addition, the defendant was ordered to pay civil damages, as moral damages, as well as material damages.

### **5. Aspects regarding the investigation of the causes of suspicious death through the lens of ECtHR jurisprudence**

“Justice is the primary evaluation criterion of social system legitimacy. In the modern social system, whether it is political system, economic system or other systems, the core and main part of it is the expression of legitimacy through the legal system without exception. And when we combine the concept of "justice" with a particular legal field, it means that we use the primary criterion of "justice" as a critical or constructive tool to prove or disprove the legal system in this field”<sup>21</sup>.

We cannot ignore the fact that investigating the causes of suicide is a rather difficult process, as the reasons for resorting to such a gesture are often unclear, being extremely difficult to establish whether it was a suicide or whether the constituent elements of the offence provided in article 191 of the Penal Code are somehow met. The necessity and importance of studying the victim is essential, as certain elements necessary to elucidate the case sometimes can only be provided by the victim of the crime, and in the mechanism of committing the act the victim can have an active or passive role. It must be borne in mind that in the process of committing a crime, the actions preceding the act also play an essential role, if they are related to its commission. Even in the definition of the term victimology, the role of the victim in the genesis of the crime and the limits in which his activity contributed to the production of the antisocial fact are mentioned<sup>22</sup>. On the other hand, unfortunately, cases of suspicious death are not always properly investigated, and an eloquent example in this regard is the Case of Gheorghe Cobzaru against Romania. We encounter a similar situation in other states, not only in Romania, if we refer, for example, to the Vasîlca case against the Republic of Moldova or the Anuşca case against the Republic of Moldova.

In the Case of *Gheorghe Cobzaru v. Romania*<sup>23</sup>, the Court found a violation of Article 2 of the Convention both materially and procedurally, the investigation being neither quick nor efficient. It appears from the claimant's complaint that he complains about the killing of his son by a policeman and about the lack of an effective investigation aimed at punishing the person responsible. The plaintiff also alleged that the officer shot his son and refused to administer first aid and to transport him to an emergency hospital. The Court found that "in this case, a criminal investigation was opened by the authorities following the complaint made by the plaintiff. This investigation ended on October 11, 2007, following the decision not to start the criminal investigation, to be reopened on June 3, 2008, closed on June 20, 2012 and reopened, again, on November 28, 2012. [...] For the evaluation of the evidence, the Court adopts, in general, the criterion of proof "beyond any reasonable doubt". The Court recalls that such evidence may arise from a series of indications or from unchallenged, sufficiently serious, precise and concordant suppositions. When the events in question, in whole or

<sup>21</sup> Ding, G., Liu, G., Chen, Y. (2020). *A study on the Theory of Climate Justice in International Environmental Law*, „Scholars International Journal of Law, Crime and Justice”, Dubai: Scholars Middle East Publisher. 3(1), 8. DOI: 10.36348/sijlcj.2020.v03i01.002. Available on <https://saudijournals.com/sijlcj>.

<sup>22</sup> M.A. Hotca, *Dictionary of criminal law*, Ed. Editas, Bucharest, 2004, p. 465.

<sup>23</sup> The decision of the European Court of Human Rights of June 25, 2013, published in the Official Journal, Part I no. 666 of October 30, 2013.

in part, are known exclusively to the authorities, any bodily injury or death occurring during this period gives rise to strong factual presumptions. In reality, the burden of proof should be considered to be on the authorities, who must provide a satisfactory and convincing explanation of the facts and present solid elements that enable the applicant's claims to be rejected (*Salman v. Turkey (MC)*, no. 21,986/93, item 100, CEDO 2000-VII)". The Court also specified that, considering the unfolding of the facts and the contradictions of certain elements of evidence in the case file instrumented by the Romanian authorities, "it cannot be said whether the authorities really wanted to find out whether the death of Adrian Cobzaru was caused by accidental causes. The insufficiency of concrete elements and evidence prevents an assessment by the Court of the facts in question, based only on the findings made by the national authorities. Consequently, the omissions attributable to the criminal investigation bodies described above lead the Court to reject the Government's argument that the death of the applicant's son was accidentally caused by the actions of a police officer who was in self-defense. A different conclusion would be to admit that the authorities can profit from their own shortcomings and to allow the perpetrators of potentially lethal acts to escape the responsibility they bear." Also, regarding the investigation made by the authorities, the applicant criticized the attempt of the investigators responsible in the case to exonerate the police officer involved, as well as the lack of diligence of the prosecutor's office, to which he brings a serious accusation, i.e. the failure to carry out an effective criminal investigation, likely to bring before the court the author of his son's death. Regarding the investigation, the Court found that the representatives of the prosecutor's office were notified and that an investigation took place in which the circumstances of the death of the applicant's son were investigated. The Court observed that the criminal investigation regarding the circumstances of Adrian Cobzaru's death began on September 19, 2006 and that, more than 6 years after the events, it was still pending before the Prosecutor's Office attached to the Bucharest Court, stressing that the conduct of the investigation on a such a long period of time carries the risk of complicating the authorities' data collection and fact-finding. During the mentioned period, two orders of the prosecutor's office were annulled by the internal courts, the case being sent back to it with specific instructions regarding the evidence necessary to elucidate the circumstances in which the death occurred. On March 14, 2008, the Prosecutor's Office attached to the Bucharest Court received the case for the continuation of the murder investigation and for the clarification of the contradictions of the evidence, and after 9 months only the policeman and the 4 witnesses were heard, and the municipal police was delegated with the continuation of the investigation. At the same time, the Court took into account the findings made by the Bucharest Court on November 28, 2012, according to which the investigation proved to be deficient, and the evidence unconvincing or absent to establish the circumstances of the death.

In the *Case of Vasîlca v. Republic of Moldova*<sup>24</sup>, the circumstances were as follows: "On March 8, 2008, at approximately 4:40 p.m., the plaintiff's son (V.), who was seventeen years old, died after falling from one of the common balconies of a residential block. The police collaborators initiated a preliminary investigation regarding the causes of V.'s death, the main version being suicide. [...] On March 10, 2008, a medico-legal examination report was drawn up, through which it was found that V. died due to serious bodily injuries caused by his fall; no alcohol or narcotic substances were detected in his blood [...]. The obligation to protect the right to life in accordance with Article 2 of the Convention, interpreted in connection with the general obligation of the State, under Article 1 of the Convention, to "recognize to any person under its jurisdiction the rights and freedoms defined in the Convention" implicitly implies that there must be an effective official investigation of cases of death of persons under suspicious circumstances. This obligation is not limited to cases where it has been established that the death was caused by a public official. The mere fact that the authorities are informed of the death gives rise ipso facto to the obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances in which it occurred (see *Sabuktekin v. Turkey*, no. 27243/95, § 98, ECHR 2002-II; *Kavak v. Turkey*, no. 53489/99, § 45, July 6, 2006 and *Al Fayed*

<sup>24</sup> ECtHR decision of February 11, 2014, regarding the *Vasîlca case against the Republic of Moldova* (Application no. 69527/10). Available at: <http://agent.gov.md/wp-content/uploads/2015/03/VASILCA-RO.pdf>.

*v. France (dec.)*, no. 38501/02, September 27, 2007). The investigation must be effective in order to establish the causes of bodily injuries and to identify the persons responsible with the aim of punishing them. If death occurs, the investigation is of even greater importance, given that the essential objective of such an investigation is to ensure the effective application of national legislation protecting the right to life (see *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II). The purpose of the obligation mentioned above is one of means, not of results. Thus, the authorities must take the reasonable measures at their disposal to secure the evidence regarding the incident. Any deficiency in the investigation, which undermines the ability to establish the cause of death, the person or persons responsible, will risk conflicting with this standard (see *Menson v. the United Kingdom (dec.)*, no. 47916/99, ECHR 2003-V, and *Rajkowska v. Poland (dec.)*, no. 37393/02, November 27, 2007). In the present case, it should be noted that the prosecuting officer in charge of this case submitted at least eight times the proposal not to open a criminal investigation in connection with the death of V. and that each time apart from the last report, the proposals were rejected by the prosecutor, the superior hierarchical prosecutor or the investigating judge as being premature or, as the investigating judge assessed, "with inexplicable omissions". The investigating judge found gaps in the course of the investigation, such as the failure to carry out a number of actions that were to be taken by the authorities at the request of the investigating officer. [...] The Court also notes that the orders of the prosecutor not to initiate the criminal prosecution and the conclusion of the investigating judge of August 20, 2010 do not contain mentions regarding the applicant's request to obtain the information from the mobile phone company about the person (persons) who they called V. before the death or the statements made by the saleswomen of a nearby store, which the applicant indicated in her complaint of August 1, 2008 [...]. The Court reiterates the requirement of a reasonable conduct of the investigation in cases concerning the death of persons. The investigation, of course, was initiated promptly, but the time taken to complete it – two years and five months – cannot be justified in terms of the complexity of the case or any objective impediments. [...] Moreover, as it follows from the conclusion of the investigating judge, the authorities did not involve the applicant sufficiently in the investigation. [...] The Court emphasized several times that the involvement of close relatives in the investigation, in these situations, serves to ensure the public responsibility of the authorities and the credibility of society in their actions (see the case of *Ramsahai and others v. Holland [MC]*, no. 52391/99, § 321, CEDO 2007-II), when it is necessary to protect the legitimate interests of the person. In this case, the applicant had a constant and legitimate interest in conducting an investigation, which could have been achieved by recognizing her special status in accordance with the provisions of the Code of Criminal Procedure [...]. The Court points out that Article 2 obliges more than simply informing the close relatives about the progress of the investigation: this includes their active involvement in the investigation (see *Salgan v. Turkey*, no. 46748/99, §89, 20 February 2007). [...] The Court notes that, although the investigation into V.'s death was promptly initiated, the criminal prosecution was not initiated. [...] In conclusion, considering the way in which V.'s death was investigated, the time taken for the investigation, the failure to examine certain evidence invoked by the applicant, the very limited involvement of the applicant in the investigation of the case, the Court considers that the investigation was not "effective" in the sense of its jurisprudence. Therefore, Article 2 of the Convention was violated."

Another case in which the Court found a violation of Article 2 of the Convention by the method of investigating the death, by the excessive duration of the investigations (three years and seven months) and by the very limited involvement of the applicant in the criminal prosecution, considering that the investigation was not "effective" in the sense of its jurisprudence, it is represented by the Case *Anuşca* against the Republic of Moldova<sup>25</sup>. In this case, the applicant's son, during his mandatory military service, was found dead by hanging from a tree, after he had previously received a reprimand from one of his superiors. Shortly before he died, he left a letter with a farewell message to a colleague. After the discovery of the body, the military prosecutor ordered the start of the criminal

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<sup>25</sup> ECtHR Decision of May 18, 2010, regarding the *Anuşca case against the Republic of Moldova* (Application no. 24034/07). Available at: [http://justice.md/file/CEDO\\_judgments/Moldova/ANUSCA%20\(ro\).pdf](http://justice.md/file/CEDO_judgments/Moldova/ANUSCA%20(ro).pdf).

investigation, in which the medical-legal expertise, carried out a few weeks later, established asphyxiation caused by strangulation as the cause of death. During the criminal investigation, other soldiers were also questioned and a post-mortem psychiatric examination was also carried out. Later, the military prosecutor ordered the termination of the criminal investigation, on the grounds that no crime had been committed, and suicide constituted the cause of death. As we stated above, the Court assessed that, from a procedural point of view, Article 2 of the ECHR was violated. The Court reiterated that "special diligence is required when a young person dies while the military authorities are responsible for his physical and moral condition. If a suicide is presumed to have taken place, the authorities must demonstrate that they have done everything in their power to remove any doubt to satisfy the interest of the family of the deceased in all the circumstances surrounding the person's death. In practice this means a thorough investigation of all the necessary elements to exclude any tendencies to consider that the deceased was the subject of a criminal act. The investigation will be thorough and multilateral. The authorities are obliged to take all reasonable measures to establish all these elements".

## 6. Conclusions

A person who dies by suicide or attempts to do so does not always want to die, but chooses this way considering that it is the only way to deal with the difficult situations he is going through or the feelings he is experiencing. In this context, the legislator criminalized both the interference of another person for the purpose of total mental destabilization of the victim and in motivating him to take his own life, as well as the support for committing the suicidal act.

In order to ensure a uniform practice at the level of the courts, we consider it necessary for the legislator to intervene in order to clarify the terminology "diminished discernment".

In the case of the second aggravated variant provided in the text of article 191 para. (3) of the Penal Code, since we are talking about categories of extremely vulnerable people, we propose that the act of determining or facilitating suicide be considered directly a crime of murder or qualified murder, as the case may be.

Investigating the causes of suicide is a rather difficult process, since often the reasons for resorting to such a gesture are unclear, being extremely difficult to establish whether it was a suicide or whether the constitutive elements of the crime provided for in article 191 of the Penal Code. In addition, as we have shown, unfortunately, cases of suspicious death are not always properly investigated.

At the same time, we also believe that the probation legislation is quite lenient with the active subjects of crimes against life, sometimes facts such as determining or facilitating suicide being extremely difficult to prove. Perhaps, sometimes, it would be good for the national courts to benefit from a margin of freedom, so that the application of the letter of the law is done in full harmony with the spirit of the law, or, in other words, so that the letter of the law does not remain dead.

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