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IMPACT OF RECENT LEGISLATIVE CHANGES ON CRIMES AGAINST THE PERSON

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Abstract *Equality before the law is constitutionally enshrined. Depending on the evolution of society, at certain times, it is possible that the legislator considers it necessary, through the lens of objective reality, to grant increased protection, from the perspective of the criminal law, to a certain category of persons, namely, in the present case, the minor. Although, in essence, we can understand this new vision, we still have to highlight the fact that the amendments and additions to the criminal provisions must, on the one hand, comply with the rules of legislative technique, and, on the other hand, not lead to situations in which the application of these rules to concrete cases would be difficult to achieve.*

Keywords: crime; person; minor; legal provision

1. Introductory aspects

The present approach appeared having as a background the recent changes made regarding the provisions of the Criminal Code[3], an increased attention being shown by the legislator to the rules for criminalizing acts against the person. We will not focus on the large number[4] of these changes in a relatively short time, of 7 months, by referring to the importance

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[3]It is about Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 510 of July 24, 2009, with subsequent amendments and additions.
[4]The criminal code was amended 11 times between June and December 2023, as follows: by Law no. 171/2023 for the amendment and completion of art. 226 of Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 532 of June 15, 2023, by Law no. 200/2023 for the amendment and completion of Law no. 286/2009 regarding the Criminal Code, as well as other normative acts, published in the Official Gazette of Romania no. 616 of July 6, 2023, by Law no. 213/2023 for completing art. 91 para. (3) from Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 629 of July 10, 2023, by Law no. 214/2023 for the amendment and completion of Law no. 286/2009 regarding the Criminal Code, of Law no. 135/2010 regarding the Code of Criminal Procedure, as well as for the amendment of Law no. 318/2015 for the establishment, organization and operation of the National Agency for the Administration of Unavailable Assets and for the modification and completion of some normative acts, published in the Official Gazette of Romania no. 634 of July 11, 2023, by Law no. 217/2023 for the amendment and completion of Law no. 286/2009 regarding the Criminal Code, of Law no. 135/2010 regarding the Criminal Procedure Code, as well as the Audiovisual Law no. 504/2002, published in the Official Gazette of Romania no. 634 of July 11, 2023, by Law no. 248/2023 for the amendment and completion of Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 673 of July 21, 2023, by Law no. 258/2023 for the amendment of art. 369 of Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 871 of September 28,

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of the normative act that underwent all these changes in the context of the evolution of society, referring to the impact of their application to different concrete cases, although we consider that the legislator's option to intervene more often on the normative act in question makes it difficult to apply the criminalization rules, on the one hand, and to know them by the members of society, on the other hand. In the same way, we consider that it is not appropriate for the legislator to intervene on some criminalization rules, noting that the changes made will enter into force at a later date[1], located approximately 6 months from the date on which they were published in the Official Gazette of Romania, as problems may arise when considering the application of criminal law over time.

What we want to address in the present paper are aspects related to: the necessity or not of the introduction of para. (2^1) in art. 194 of the Criminal Code, in which the crime of bodily harm is described, in the context of the introduction of the same provisions in art. 193 of the Criminal Code, in which the crime of hitting or other violence is described, the connection between the crime described in art. 193 of the Criminal Code or in art. 194 of the Criminal Code and that of ill-treatment applied to the minor, described in art. 197 of the Criminal Code, by virtue of decision[2] no. 37/2008 pronounced on appeal in the interest of the law by the High Court of Cassation and Justice, to the existence of an aggravated variant of the crime of hitting or other violence, respectively bodily injury, when the deed is "committed in public"[3], to the legal nature of the incrimination contained in art. 199 para. (1) of the Criminal Code, considering decision[4]

2023, by Law no. 291/2023 for the amendment and completion of art. 84 of Law no. 272/2004 regarding the protection and promotion of children's rights and for completing art. 121 of Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 968 of October 25, 2023, by Law no. 314/2023 for the modification and completion of some provisions of the Criminal Code, published in the Official Gazette of Romania no. 1013 of November 7, 2023, by Law no. 323/2023 for the amendment of art. 378 para. (1) let. c) from Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 1020 of November 8, 2023, by Law no. 401/2023 for the amendment of art. 437 of Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania no. 1132 of December 14, 2023.

[1]Such an option has been shown by the legislator in only one case, so far, namely the one regarding the criminalization of art. 6^1 of Law no. 241/2005 for the prevention and combating of tax evasion, published in the Official Gazette of Romania no. 672 of July 27, 2005, with subsequent amendments and additions, in the sense that the norm was published on December 18, 2021, but entered into force on March 1, 2022, as stated in paragraph (2) of the aforementioned article.

[2]The High Court of Cassation and Justice ruled that "The crimes of hitting or other violence provided by art. 180 of the Criminal Code (N.N. art. 193 of the Criminal Code in force), bodily injury provided by art. 181 of the Criminal Code (N.N. art. 194 of the Criminal Code in force) and illegal deprivation of liberty provided by art. 189 of the Criminal Code (N.N. art. 206 of the Criminal Code in force), as the case may be, will be held concurrently with the crime of ill-treatment of minors (N.N. art. 197 of the Criminal Code in force), in the case of the parent's act or the person to whom the minor was entrusted for upbringing and education, who abuses his authority and, contrary to the interests of the minor, exercises acts of violence or deprivation of liberty against him, with the intention of causing him suffering, physical or moral harm, and who have put in serious danger the minor's physical, intellectual or moral development". Available at:https://www.iccj.ro/biblioteca-digitala/decizii-pronuntate-in-recurs-in-interesul-legii/comunicate-privind-deciziile-pronuntate-in-recurs-in-interesul-legii-in-cadrul-sectiilor-unite-pana-la-data-de-17-ianuarie-2011/?Anul=2008 (accessed: November 6, 2023).

[3]According to art. 184 of the Criminal Code, "The act is considered committed in public when it was committed: a) in a place that by its nature or destination is always accessible to the public, even if no person is present; b) in any other place accessible to the public, if two or more people are present; c) in a place inaccessible to the public, but with the intention that the deed be heard or seen and if this result occurred in relation to two or more people; d) in a gathering or meeting of several people, with the exception of meetings that can be considered to have a family character, due to the nature of the relationships between the participating people".

[4]The High Court of Cassation and Justice ruled that "the incrimination from art. 199 para. (1) of the Criminal Code represents an aggravated variant of the offense of hitting or other violence, provided by art. 193 para. (2) of the Criminal Code. The general limitation period for the crime of hitting or other violence in the form of family violence, provided by art. 193 para. (2) of the Criminal Code with the application of art. 199 para. (1) of the Criminal Code, is the one shown by art. 154 para. (1) let. c) from the Criminal Code". Available at: https://www.iccj.ro/2023/10/25/decizia-nr-58-din-18-septembrie-2023-2/ (accessed: November 6, 2023).

no. 58 of September 18, 2023 of the High Court of Cassation and Justice, pronounced for resolving a question of law, to the legal solution if the minor, victim of the crime of hitting or other violence or of bodily injury, is also a family member of the perpetrator and the possibility or not of retaining both family violence [art. 199 para. (1) of the Criminal Code] and the crime of ill-treatment of minors (art. 197 of the Criminal Code).

2. The introduction of the same paragraph. (2[1]) both in art. 193 of the Criminal Code, as well as in art. 194 of the Criminal Code

Through the unique article of Law[1] no. 248/2023 for the amendment and completion of Law no. 286/2009 regarding the Criminal Code, a new paragraph (2[1]) was introduced, both in art. 193 of the Criminal Code, which describes the crime of hitting or other violence[2], as well as in art. 194 of the Criminal Code, in which the crime of bodily harm[3] is described, with the same content, as follows: "The special limits of the punishment provided in para. (1) and (2) are increased by one third when: a) the victim is in the care, protection, education, guard or treatment of the perpetrator; b) the victim is a minor; c) the act is committed in public; d) the perpetrator has on him a firearm, an object, a device, a substance or an animal that can endanger the life, health or bodily integrity of persons".

In the context of the need to comply with the rules of legislative technique[4], we consider that it was not necessary to introduce para. (2[1]) in art. 194 of the Criminal Code. We consider, on the one hand, the content of art. 16 para. (1) from Law no. 24/2000, in the sense that "in the legislative process it is prohibited to establish the same regulations in several articles (...)", and, on the other hand, the fact that the crime of bodily injury is built on the pattern of "the act provided in art. 193 of the Criminal Code." In the specialized literature it was stated that "the crime of bodily injury is a variation of the crime of hitting or other violence, which has received its own name"[5]. This reference has as an argument the very norm of incrimination. As can be seen from the analysis of the criminalization rule from art. 194 para. (1) of the Criminal Code, the legislator considered the act of hitting or other violence both in the basic version and in the two aggravated versions.

[1]Published in the Official Gazette of Romania no. 673 of July 21, 2023.

[2]In art. 193 of the Criminal Code it is provided as follows: "Hitting or other acts of violence (1) Hitting or any acts of violence causing physical suffering are punishable by imprisonment from 3 months to 2 years or a fine." (2) The act by which traumatic injuries are produced or the health of a person is affected, the severity of which is assessed by days of medical care of no more than 90 days, is punishable by imprisonment from 6 months to 5 years or a fine. (2^1) The special limits of the punishment provided in para. (1) and (2) are increased by one third when: a) the victim is in the care, protection, education, guard or treatment of the perpetrator; b) the victim is a minor; c) the act is committed in public; d) the perpetrator has on him a firearm, an object, a device, a substance or an animal that may endanger the life, health or bodily integrity of persons. (3) The criminal action is initiated upon the prior complaint of the injured person. (4) In the case of acts committed under the conditions of para. (2^1), the criminal action can also be initiated ex officio".

[3]In art. 194 of the Criminal Code it is provided as follows: ,, Bodily injury (1) The act provided in art. 193, which caused any of the following consequences: a) an infirmity; b) traumatic injuries or damage to a person's health, which required, for healing, more than 90 days of medical care; c) a serious and permanent aesthetic damage; d) abortion; e) endangering the person's life, is punishable by imprisonment from 2 to 7 years. (2) When the deed was committed in order to produce one of the consequences provided in para. (1) let. a), let. b) and let. c), the penalty is imprisonment from 3 to 10 years. (2^1) The special limits of the punishment provided in para. (1) and (2) are increased by one third when: a) the victim is in the care, protection, education, guard or treatment of the perpetrator; b) the victim is a minor; c) the act is committed in public; d) the perpetrator has on him a firearm, an object, a device, a substance or an animal that may endanger the life, health or bodily integrity of persons. (3) The attempt of the crime provided in para. (2) is punished".

[4]Law no. 24/2000 regarding the rules of legislative technique for the elaboration of normative acts, republished in the Official Gazette of Romania no. 260 of April 21, 2010, with subsequent amendments and additions.

[5]Dobrinoiu V., Neagu N. (2011), *Criminal law. The special part. Judicial theory and practice*, Publishing Universul Juridic, Bucharest, p. 48.

Considering the current situation, the legal solution in the hypothesis in which, in a concrete case, a minor is hit with intent of causing an infirmity, by a perpetrator who knows the victim's minority status, is to include the act in the provisions of art. 194 para. (2^1) of the Criminal Code, and not in those of para. (2) of the same article, with the consequence that there is a special maximum limit of 13 years and 4 months' imprisonment instead of 10 years' imprisonment. Thus, the special maximum limit in this case exceeds the special minimum limit of the prison sentence in the case of the crime of murder (art. 188 of the Criminal Code), which is 10 years in prison. We believe that the legislator's option at the time of drafting the Criminal Code to establish the special maximum limit in the case of the prison sentence in the aggravated version of the crime of bodily harm, described in art. 194 para. (2) of the Criminal Code, in the amount of the special minimum for the crime of murder, had the role of differentiating the two crimes, from the point of view of their seriousness.

Relative to the content of let. d) of paragraph (2^1) of art. 193 of the Criminal Code, respectively of art. 194 of the Criminal Code, we consider some clarifications necessary. First of all, the wording used by the legislator is not specific to the Romanian language because the meaning of the phrase "he has on himself" is that of "carrying", or, unlike the other objects to which the legislator refers, "an animal" cannot be held on a person, but it can only accompany the person. Secondly, in this legal text there is also a grammatical error because "the terms of the multiple subject are in the singular and are disjunctively coordinated"[1], the agreement with the verb having to be in the singular. Thus, it should be specified: "(...) has a firearm, an object, a device, a substance or is accompanied by an animal that can endanger (...)". Third, we consider this aggravating circumstance to be incoherent by listing elements that have no relation to each other, in the sense that, while any firearm is always a danger for the life, health or bodily integrity of a person, if it is used, and not for simple wear, the same cannot be said about "an object, a device, a substance or an animal". With reference to these last four elements, we consider that the legal provisions are unconstitutional, lacking predictability and accessibility, according to art. 1 paragraph (5) and art. 21 para. (3) of the Romanian Constitution[2], which will leave room for arbitrariness in the resolution of cases brought to trial. Fourthly, we consider that this aggravating circumstance of criminal liability is not even necessary, in the context in which there is a regime of weapons, essential components and ammunition[3], and its non-compliance attracts criminal liability according to art. 342 of the Criminal Code[4] , carrying or using, without right, dangerous objects is also a crime[5], and if the

[1]Available at: https://gramaticalimbiiromane.ro/sintaxa/sintaxa-propozitiei/predicatul/acordul-predicatul-subiectul/ (accessed: November 6, 2023).

[2]Available at: https://www.cdep.ro/pls/dic/site2015.page?id=339&idl=1&par1=2 (accessed: November 6, 2023).

[3]Law no. 295/2004 regarding the regime of weapons, essential components and ammunition, republished in the Official Gazette of Romania no. 425 of June 10, 2014, with subsequent amendments and additions.

[4]In art. 342 of the Criminal Code it is provided as follows: "Breach of the arms and ammunition regime (1) Possession, carrying, manufacturing, as well as any operation regarding the circulation of lethal weapons, ammunition, their mechanisms or devices or the operation of lethal weapons repair workshops, without right, is punishable with imprisonment from one to 5 years. (2) Unauthorized possession or carrying of non-lethal weapons from the category of those subject to authorization is punishable by imprisonment from 3 months to one year or a fine. (3) Stealing the weapons or ammunition provided in para. (1) and para. (2) is punishable by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights. (4) Carrying the weapons provided in para. (1) and para. (2), without right, in the premises of public authorities, public institutions or other legal persons of public interest or in the spaces reserved for the conduct of the electoral process, shall be punished with imprisonment from one to 5 years and the prohibition of certain rights. (5) If the facts provided in para. (1) and para. (3) have as their object prohibited weapons or ammunition, mechanisms or devices thereof, the special limits of the punishment are increased by one third. (6) Failure to submit the weapon and ammunition to an authorized gunsmith within 10 days of the expiration of the validity period of the weapon permit constitutes a crime and is punishable by imprisonment from 6 months to 3 years."

[5]According to art. 372 of the Criminal Code: „Carrying or using dangerous objects without right (1) The act of carrying without right, at public gatherings, cultural-sporting events, in specially arranged and authorized places

animal is dangerous, there are also in this hypothesis, distinct criminalizations[1], a situation in which if a person, having on him "a firearm, an object, a device, a substance or an animal that can endanger the life, health or bodily integrity of persons", would hit or cause any act of violence on another person, the criminal offense would be retained, which would lead to the application of a much higher penalty than in the case of increasing the special penalty limits by one third.

3. The link between the crime of hitting or other violence (art. 193 of the Criminal Code) or that of bodily injury (art. 194 of the Criminal Code) and the crime of ill-treatment of minors (art. 197 of the Criminal Code)

On the one hand, this analysis was imposed based on the existence of the decision of the H.C.C.J. no. 37/2008, pronounced on appeal in the interest of the law, by which the court ruled, according to the provisions of the previous Criminal Code[2], that "the offenses of hitting or other violence provided by art. 180 of the Criminal Code, bodily injury provided by art. 181 of the Criminal Code and unlawful deprivation of liberty provided by art. 189 of the Criminal Code, as the case may be, shall be held concurrently with the crime of ill-treatment of the minor, in the case of the act of the parent or the person to whom the minor was entrusted for upbringing and education, who abuses his authority and, contrary to the interests of the minor, exercises acts of violence or deprivation of liberty against him, with the intention of causing him suffering, physical or moral harm, and which seriously endangered the physical, intellectual or moral development of the minor"[3], in the context of the existence of two different opinions[4] in the specialized literature, relative to the applicability of this decision to concrete cases brought to trial. We consider, for the arguments found in the decision set out above, that the solution of the court retains its validity also under the Criminal Code in force, an aspect also supported by the norm of art. 474[1] of the Criminal Procedure Code[5] , because the simple

for fun or leisure or in means of public transportation: a) the knife, dagger, box or other such objects manufactured or prepared specifically for cutting, stabbing or striking; b) non-lethal weapons that are not subject to authorization or devices for electric shocks; c) irritant-lacrimogenic or paralyzing substances shall be punished with imprisonment from 3 months to one year or with a fine. (2) The use, without right, at public gatherings, cultural-sporting events, in places of entertainment or leisure or in means of public transport of the objects or substances provided in para. (1) is punishable by imprisonment from 6 months to 2 years or a fine. (3) The carrying, without right, of the objects or substances provided for in para. (1) in the headquarters of public authorities, public institutions or other legal entities of public interest or in the spaces reserved for the conduct of the electoral process shall be punished with imprisonment from one to 3 years or with a fine."

[1]For example, in art. 12 para. (1) from Government Emergency Ordinance no. 55/2002 regarding the keeping regime of dangerous or aggressive dogs, republished in the Official Gazette of Romania no. 146 of February 27, 2014, it is provided as follows: "Failure by the owner of the dog or its temporary keeper of the measures to prevent a canine attack on a person, provided in art. 6, if the attack took place, constitutes a crime and is punishable by imprisonment from 6 months to 3 years or a fine," and in para. (2) of the same article states that: "If the act provided in para. (1) produced consequences from those provided in art. 193 para. (2), art. 194 or 195 of the Criminal Code, the special maximum of the penalties provided in these articles is increased by 2 years."

[2]Represented by Law no. 15/1968 regarding the adoption of the Criminal Code of Romania, published in the Official Gazette no. 79-79bis of June 21, 1968, currently repealed.

[3]Published in the Official Gazette of Romania no. 177 of March 23, 2009, available at: https://www.iccj.ro/biblioteca-digitala/decizii-pronuntate-in-recurs-in-interesul-legii/comunicate-privind-deciziile-pronuntate-in-recurs-in-interesul-legii-in-cadrul-sectiilor-unite-pana-la-data-de-17-ianuarie-2011/?Anul=2008(last access: November 13, 2023).

[4]In the sense in which the decision maintains its validity, see Cioclei V. (2021), *Criminal law. Special part I. Crimes against the person and crimes against property*, C.H. Publishing House. Beck, Bucharest, p. 90. In the sense in which the crime of ill-treatment of minors is a complex crime, see Dobrinoiu V., Neagu N. (2011), *Criminal law. The special part. Judicial theory and practice*, Universul Juridic Publishing House, Bucharest, pp. 63-64.

[5]Law no. 135/2010 regarding the Criminal Procedure Code, published in the Official Gazette of Romania no. 486 of July 15, 2010, with subsequent amendments and additions. In art. 474[1] of the Criminal Procedure Code it is

repositioning of the norm of criminalizing the act of ill-treatment applied to the minor in the title dedicated to crimes against the person does not lead to the non-existence of the untied legal problem in the new regulation.

On the other hand, we also want to address the legislative solution released by the High Court of Cassation and Justice in decision no. 37/2008 by reference to the most recent legislative changes made in the case of hitting or other violence, respectively bodily injury, in the hypothesis that an aggravated version of each of the two crimes will be retained in the hypothesis that the passive subject is a minor. We consider that in the hypothesis in which in a specific case the crime of ill-treatment of the minor and one of the two crimes mentioned above will be considered, in the case of the latter, the aggravated version of committing the act on to a minor will not be retained because it would mean a double aggravation of the criminal liability based on the same argument, namely the minority of the victim, a situation that is not accepted in the criminal legislation[1].

4. Apprehension of an aggravated version of the crime when the act is "committed in public"[2]

Through the changes made by the legislator in the Criminal Code by Law no. 248/2023 to the offenses of hitting or other violence, respectively bodily injury, in the sense of creating an aggravated variant both by reference to the basic variant and to the first aggravated variant for each of these two crimes, considering that it is more serious „the deed committed in public", according to para. (2^1) let. c) of art. 193 of the Criminal Code and of art. 194 of the Criminal Code, we consider the proposal *de lege ferenda* to create such a circumstance also in the case of the crime of second-degree murder, described in art. 189 para. (1) of the Criminal Code. We have as an argument the fact that, if a crime against bodily integrity or health is more serious when it is committed in public, the more the same circumstance is justified to exist in the case of a crime against life, especially since hitting or other violence, respectively bodily harm can naturally be absorbed into the crime of murder or second-degree murder.

5. The legal solution in the case of the crime of hitting or other violence, respectively bodily injury when the minor passive subject is also a family member[3]

We consider in the analysis of the legal solution above the decision[4] no. 58 of September 18, 2023, pronounced by the High Court of Cassation and Justice for resolving a question of law, in the sense that "the criminalization of art. 199 para. (1) of the Criminal Code represents an aggravated variant of the offense of hitting or other violence, provided by art. 193 para. (2)

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stipulated that: "the effects of the decision cease in the case of repeal, finding of unconstitutionality or modification of the legal provision that generated the unsolved legal problem, unless it exists in the new regulation".

[1]Dobrinoiu V., Neagu N. (2011), *op.cit.,* p. 81.

[2]According to art. 184 of the Criminal Code „ The act is considered committed in public when it was committed: a) in a place that by its nature or destination is always accessible to the public, even if no person is present; b) in any other place accessible to the public, if two or more people are present; c) in a place inaccessible to the public, but with the intention that the deed be heard or seen and if this result occurred in relation to two or more people; d) in a gathering or meeting of several people, with the exception of meetings that can be considered to have a family character, due to the nature of the relationships between the participating people".

[3]According to art. 177 of the Criminal Code, "family member means: a) ascendants and descendants, brothers and sisters, their children, as well as persons who have become such relatives through adoption, according to the law; b) the husband; c) people who have established relationships similar to those between spouses or between parents and children, if they live together. (2) The provisions of the criminal law regarding family members, within the limits provided in para. (1) let. a), applies, in the case of adoption, to the adopted person or his descendants in relation to natural relatives".

[4]Published in the Official Gazette of Romania no. 965 of October 25, 2023.

of the Criminal Code(...)"[1]. We specify that, for identity of reason, the criminalization in art. 199 para. (1) of the Criminal Code is an aggravated variant for each of the crimes referred to in the respective article, more precisely: hitting or other violence and in the basic version, bodily injury, hitting or injury causing death, murder, respectively second-degree murder.
We consider that in the hypothesis where the passive subject of the crime of hitting or other violence or bodily injury is both a minor and a family member, the provisions of art. 199 para. (1) of the Criminal Code will be applied, in the sense that "the special maximum of the punishment provided by law is increased by a fourth", but not by reference to the punishment provided according to art. 193 or 194 para. (2^1) let. b) of the Criminal Code, but to the basic version or the first aggravated version for any of the two crimes, because double aggravation of liability cannot be accepted on the same legal basis, relative to the quality of the passive subject.

6. The relationship between the crime of ill-treatment of minors and the criminalization of art. 199 para. (1) of the Criminal Code

We believe that it is not possible to hold a concurrent crime[2] between the act of ill-treatment applied to the minor (art. 197 of the Criminal Code) and family violence [art. 199 para. (1) of the Criminal Code] because in art. 199 para. (1) of the Criminal Code there is not an autonomous crime that is described, but an aggravated variant of each of the facts referred to by the legislator in the norm, an aspect highlighted *mutatis mutandis* from the solution already established by the High Court of Cassation and Justice through the decision pronounced in the resolution of a legal issue no. 58/2023, mentioned above.

Moreover, we consider that even in the hypothesis in which the passive subject is a minor, a family member by reference to the active subject represented by his parent or the person in whose care the minor is, no formal concurrence of crimes between the crime of hitting or other violence or bodily harm, with the retention of the aggravated variant when the deed is committed against a minor and is also a family member, i.e. applying the provisions of para. (2^1) let. b) of art. 193, respectively art. 194 of the Criminal Code, related to art. 199 para. (1) of the Criminal Code, and the crime of ill-treatment of minors (art. 197 of the Criminal Code), but a formal competition will be held between the crime of hitting or other violence, in the basic version [art. 193 para. (1) of the Criminal Code] or the first aggravated version [art. 193 para. (2) of the Criminal Code], respectively the crime of bodily harm, in the basic version [art. 194 para. (1) of the Criminal Code] or the first aggravated version [art. 194 para. (2) of the Criminal Code], and the crime of ill-treatment of minors (art. 197 of the Criminal Code), without the application of the provisions of art. 199 para. (1) of the Criminal Code or those from para. (2^1) let. b) mentioned above, because another kind of reasoning cannot be accepted in light of the fact that we cannot have a double aggravation of criminal liability for the same circumstance, relative to the passive subject's family member and minor status.

If the person, in whose care the minor is, is not a family member, there is no question of applying the provisions of art. 199 para. (1) of the Criminal Code regarding the sanction, and the formal contest between the crime of hitting or other violence (art. 193 of the Criminal Code) or that of bodily injury (art. 194 of the Criminal Code) and the crime of ill-treatment of minors (art. 197 of the Criminal Code) as it is already enshrined by a decision pronounced on appeal in the interest of the law[3].

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[1]Available at: https://www.iccj.ro/2023/10/25/decizia-nr-58-din-18-septembrie-2023-2/ (last accessed: November 13, 2023).
[2]In the opposite sense, see Udroiu M. (2021), *Criminal law files. The special part. Theory and practical cases*, edition 2, Publishing House C.H. Beck, Bucharest, p. 57.
[3]It is decision no. 37/2008 pronounced by the High Court of Cassation and Justice on appeal in the interest of the law, published in the Official Gazette of Romania no. 177 of March 23, 2009, available at:

We agree with the solution[1] from the specialized literature according to which, if through the ill-treatment applied to the minor, death was pursued or at least accepted, in this situation either the crime of murder (art. 188 of the Criminal Code) or that of second-degree murder (art. 189 of the Criminal Code) will be considered, with the application of the provisions of art. 199 para. (1) Criminal Code, in the hypothesis that the passive subject is a family member.

7. Conclusions

Although we support the need to amend and complete the normative acts, including the Criminal Code, in order to ensure the increased protection of social values, from the perspective of the criminal law, we consider that it is not appropriate to intervene on the Criminal Code 11 times in 7 months (the period June-December 2023) because it makes it difficult to apply the norms to concrete cases, according to the rules of applying the law over time, and the creation of aggravated variants for some crimes, relative to the fact that the victim is a minor, although there is a general legal aggravating circumstance that refers to the vulnerability of the victim due to his age, which has a general vocation of applicability, with a role in the judicial individualization of the punishment, because this leads to non-compliance with the constitutional provisions of art. 16 of the Romanian Constitution, regarding equal rights, by reporting also to the situation of the elderly because they are also vulnerable due to their age.

REFERENCE

The Romanian Constitution
Law no. 15/1968 regarding the adoption of the Criminal Code of Romania, currently repealed
Law no. 24/2000 on legislative technical norms for the elaboration of normative acts
Law no. 295/2004 on the regime of weapons, essential components and ammunition
Law no. 241/2005 for preventing and combating tax evasion
Law no. 286/2009 regarding the Criminal Code
Government Emergency Ordinance no. 55/2002 regarding the keeping regime of dangerous or aggressive dogs
Decision no. 37/2008 pronounced on appeal in the interest of the law by the High Court of Cassation and Justice
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[1]Cioclei V. (2021), *op.cit*., p. 80.