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**ABSTRACT**

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Topic:

**CRIMES AGAINST MARRIAGE AND FAMILY**

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## **I. GENERAL CHARACTERISTICS OF THE THESIS PAPER**

### **1. Relevance of the study**

This study is dedicated to the crimes against marriage and family and the multifaceted criminal and other legal problems associated with them. It can be claimed that criminal law of the Republic of Bulgaria is a good example for effective protection of the premarital, marital and family relationships. In the Criminal Code that is currently in force, these relationships are systematically organised in Section I of Chapter IV of the Particulars and correspond to the current European understanding about the legal framework in this field. By the way, all European countries have dedicated special room in the particulars of their criminal laws (codes) for protection from deeds that have an adverse impact on marriage and family. Despite the consistent criminal law policy in this field, it can be claimed that the Bulgarian doctrine lacks any up-to-date and in-depth monograph studies of crimes against marriage and family and the ways to counteract them.

The proposed thesis paper makes an attempt to provide a comprehensive theoretical study of these types of deeds and provides certain ideas for improving the legal framework that is currently in force. In this case, the academic interest is primarily predetermined by the theoretical difficulties and problems encountered over the past few years related to law enforcement. It should also be noted that the number of convictions for such cases that have been finalised has been increasing every year, with 977 convictions in 2010 and gradual increase in their number over the next five years. Actually, there has been a certain decline in the number of finalised cases observed between 2015 and 2018 inclusive, with 585 cases in 2018, 642 cases in 2019 and 595 cases in 2020. However, this certainly does not mean there is a decreasing trend in these types of deeds. On the contrary, the data are an indicator of a relative persistence of these types of crimes in the Republic of Bulgaria.

It is a well-known fact that marriage and family play a central role in modern society and it is no accident that the tradition of Western Europe defines them as a moral guardian of human values. In this way, the institution of marriage as a social construct plays an essential role in shaping the world view of children in the family. Therefore, the interest in marriage and family relationship is natural in different fields of study, such as ethics, psychology, culturology, history, etc. Of

course, legal science gives the necessary emphasis on both their foundation and development, as well as their protection. Despite the long-term history and traditions, marriage and family seem to have become increasingly vulnerable in our modern society of economic prosperity, while the adequate protection of them has become increasingly essential and timely.

It should be noted that the obligation of Bulgaria, as a member of the European family, to comply with European Union (EU) law, including by transposing the relevant EU legislation and provisions into the national legislation, is often cited as a motive for the introduction of measures to improve the legal framework. It is a well-known fact that our country has been subject to numerous requirements and obligations related to the improvement of the national legal framework since 1 January 2007 until present. This is also proven by the evaluations in the critical reports drafted by the relevant European institutions. In the context of the above and considering the necessary reforms, the Act Amending and Supplementing the Criminal Code of 2018 introduced changes to the effective criminal law provisions for the purpose of formulating equivalent and comprehensive protection from any form of domestic violence, which is primarily observed in the relationships between spouses and within the family. It can be noted that these significant problems in the field of criminal law have not been sufficiently studied at present.

Undoubtedly, marriage and family are very important social and legal phenomena, which are always relevant for society and science and for experts in the field of civil law in particular. However, with a view to scientific correctness, we cannot claim that no studies have taken place at all in the field of protection of these specific relationships under criminal law. On the contrary, research literature in the field of criminal law analyses some of these problems by considering marriage and family in the context of the particular timing of these studies. It can be claimed that even the most recent studies lack an analysis of certain important crimes. Such are, for example, the crimes of convincing a parent to abandon their child or give consent for the child's adoption, as well as convincing an under-age person to give consent for adoption (Article 182a, paragraph 1 and 2 of the Criminal Code), the crime of illegal agency related to the adoption of a child (Art. 182a, paragraph 3 of the Criminal Code) and the crime of consent given by a mother to sell her child in Bulgaria or abroad (Art. 182b of the Criminal Code). Therefore, this study of the

problems in criminal law also proves to be essential because of the lack of a comprehensive adequate analysis in modern Bulgarian literature in the field of criminal law.

The topic of this thesis paper is further a topic of interest because of a number of additional reasons.

**First**, it should be highlighted that the protection of marriage and family relationships under criminal law has a century-old history in our country. All Bulgarian criminal laws have traditionally contained provisions about crimes against marriage and family. Nevertheless, the theoretical studies about their emergence, practical use, development and improvement of the legal framework are rather fragmented.

**Second**, the abovementioned legal framework is dynamic and needs to be constantly updated. On the one hand, this is necessary in order to respond to social reality, while, on the other hand, this is needed so as to comply with the European tradition, understanding and commitments we have undertaken. In the context of crimes against marriage and family, certain topics and problems have now emerged, which have not been studied or interpreted so far and which need certain attention. In addition to the ones already mentioned, other examples that need to be studied are: forced marriage; traffic of a pregnant woman for the purpose of selling her child; and crimes related to cross-border or domestic sale of children. The relevance of these violations is predetermined by the difficulties in criminal justice that have emerged and still persist.

**Third**, the understanding of some studies that surrogacy in Bulgaria is criminalised by virtue of the provisions of Art. 182a, Art. 182b and Art. 159a, paragraph 3 of the Criminal Code, also requires an in-depth analysis. This determines the need of a detailed and comprehensive study of this modern phenomenon – the so-called surrogacy, the known types thereof and its manifestation in the context of criminal law in our country and other countries as well.

The thesis paper is structured in three chapters. Chapter One is dedicated to the initial criminal law regime of crimes against marriage and family in the period after the Liberation of Bulgaria in 1878. Its development and structuring in the subsequent criminal legislation of Bulgaria has been

traced back and structured using the method of comparative law. The interpretation of the specific provisions under Article 176 through Article 186 of the effective Criminal Code and their specifics from the perspective of the object, the objective party, as well as from the perspective of the subject and the typical manifestations from the perspective of the subjective party play a central role in the thesis paper.

A separate chapter discusses the scale under international law and the legislative specifics of these types of deeds by using the method of comparative law. The approach of some leading European Union countries (Germany, France, Greece) and the legislation of other countries outside the European Union (the USA and Russia) has been analysed. This is how the similarities and differences between Bulgarian and international criminal law are pinpointed. Considering the trends in different EU member states and countries outside the EU and in relation to the problems discussed, conclusions are drawn on the respective topics in the paper and some proposals *de lege ferenda* are made.

The thesis paper has also applied the means of legal interpretation – lexical, grammatical, systematic, etc. During the research, the general scientific principles of objectiveness, reliability and replicability have been observed. An attempt has been made to achieve balance between the theoretical and practical approach.

## **2. Legal and empirical basis of the thesis paper**

Studying and summarising a wide range of legal and theoretical sources proved to be essential for the scientific research. To fulfil the tasks of the study and the historical overview of crimes against marriage and family, the study covers the provisions from the first Criminal Law of 1896 (repealed) up to the revision of the Criminal Code currently effective as of 1 January 2023.

The sources used for citing the provisions of Bulgarian legislation have not been neglected either. In addition to the substantive legislation, provisions of the Constitution of the Republic of Bulgaria, a number of provisions from the Criminal Procedure Code, the Family Code, the Child Protection Act, etc. have been considered.

To ensure completeness of the analysis, the regime of international criminal law of crimes against marriage and family of leading EU countries and countries outside the EU has been studied.

The relevant case law has also been analysed, which includes the binding interpretative judgements of the Supreme Court of Cassation and the Plenary Session Decisions of the Supreme Court, as well as a number of convictions and the justifications thereto, rulings of courts of first instance and courts of appeal and judgements of courts of appeal and the Supreme Court of Cassation. For the arguments discussed in the thesis paper, special attention has also been given to the case law of the European Court of Human Rights (ECHR).

### **3. Methodology and methods of the study**

A multi-layered set of methods of scientific research has been used for this research study. The methodological basis of this paper constitutes a systemic scientific approach and this means that a number of additional methods for scientific research should also be used, such as historical, logical, dialectical and comparative law approach. To achieve scientific objectivity, the subject and scope of the crimes against marriage and family also needed to be studied.

As a result of the scientific research methods used, an in-depth and comprehensive analysis of the scientific base and the legal regulations of these crimes has been made. The use of basic logical methods allowed to clarify the essence of the crimes against marriage and family. This, on the other hand, made it possible to distinguish the relevant problems in this field and both the need of and possibilities for refining and improving the legal basis of the Criminal Code.

First, using the historical method of study, the thesis paper outlines the stages of development of the criminal law regulations about crimes against marriage and family from the Liberation of Bulgaria in 1878 until present. The trends in the development and scope of these crimes in the Draft for a new Criminal Code have also been studied.

Then, the thesis paper has used the method of comparative law to study, analyse, compare and comment on the regulations about crimes against marriage and family in other countries. Based

on the requirements of the method of comparative law, the criminal codes (or laws) of leading EU member states and countries outside the EU that were already mentioned have been studied.

Undoubtedly, this analysis made it possible to discuss the principles of public policy to counteract crimes against marriage and family in the specific countries. This led to the conclusion that there is a need to improve the current regulations about crimes against marriage and family.

Finally, it needs to be highlighted that certain proposals *de lege ferenda* have been made for this purpose in the specific places discussing the relevant topics in order to achieve synchronisation and balance between the provisions of the Criminal Code and the current trends in the development of social reality, the socio-economic context and the requirements of the international legislation to which Bulgaria is a party and has undertaken commitments.

#### **4. Subject and scope of the study**

The thesis paper is a study where the subject is crime against marriage and family under Section I of Chapter IV of the particulars of the currently effective Criminal Code, as well as the relevant questions related thereto.

The scope of the study covers analysis of the objective and subjective characteristics of each incriminated deed provided for systematically in this part of the code.

#### **5. Objectives and tasks of the study**

The thesis paper has the following main objectives:

1. To make an overview of the entire development of criminal law policy with respect to crime against marriage and family;
2. To perform a spatial study of the specifics of the crimes against marriage and family by making an analytical discussion of the provisions of the legislation currently in force, the theory and the applicable case law;

3. To focus on the trends and the development of these crimes both in Bulgaria and in EU member states and countries outside the EU;
4. To make an analytical overview of case law related to crimes against marriage and family;
5. To develop proposals for legislative changes for improving, optimising and updating the protection under criminal law from crimes against marriage and family.

These objectives will be fulfilled by performing the following tasks:

1. Study and analysis of different publications on the topic of crimes against marriage and family;
2. A retroactive overview of these crimes by analysing the criminal law that was effective in Bulgaria before the Liberation of 1878;
3. Consistent analysis of the objective and subjective perspective of crimes against marriage and family and an in-depth analysis of the theoretical sources related thereto, as well as of the current case law;
4. Performing a detailed comparative review of the regulatory framework on the same crimes in the legislation of other countries (EU member states, such as Germany, France, Greece, Lithuania, Poland, the Czech Republic, Estonia, etc., as well as countries outside the EU, such as the USA, the state of Washington and the state of Texas, Russia, etc.);
5. Following through the trends in legislative changes in the field of crime against marriage and family.

## **II. VOLUME AND STRUCTURE OF THE THESIS PAPER**

The topic of the thesis paper is “Crimes against Marriage and Family” and its volume is 224 pages, of which: contents of the thesis paper – 5 pages; list of abbreviations used – 4 pages; references – 16 pages and 412 footnotes.

The references used include 128 publications, 96 of which are in Bulgarian and 32 – in a foreign language (English and Russian) spoken by the doctoral student, plus 4 glossaries and journals of laws. In addition, 122 sources available via the Internet have been used.

The conceptual structure of the thesis paper is classical and is divided into an introduction, three chapters with individual structural titles designated with Roman numbers, each of which contains the respective paragraphs, where the latter are distinguished by individual structural titles and marked with Arabic numbers, a conclusion and references.

The technical design of the thesis paper is by using font Times New Roman, size 12 pt and line spacing 1.5. It should be noted that the structure of the thesis paper corresponds to the subject of the study.

## **INTRODUCTION**

The introduction presents the questions about the relevance of the problems of criminal law in the field of crime against marriage and family and the need to include them as the subject of an individual and comprehensive study. Up-to-date statistics about crimes against marriage and family are presented, which in itself implies that the thesis paper would be of significance for resolving legislative problems in this thematic area.

## **CHAPTER ONE: HISTORICAL OVERVIEW OF CRIMES AGAINST MARRIAGE AND FAMILY IN BULGARIA**

This chapter presents chronologically the existing types of crimes against marriage and family in Bulgaria. The text in chapter one follows the stages of development of Bulgarian criminal law. It coincides with some important stages in the history of Bulgaria, which are inherently related to the effectiveness of different constitutional acts. Thus, the progress of our criminal law can be provisionally divided into three stages. The Tarnovo Constitution and the application of the Criminal Law of 1896 are the basis for the first stage. The second important moment starts with

the adoption of the Constitution of 1947 and with the formulation of the new Criminal Law at the beginning of 1951, which was supplemented numerous times. According to theory, the Criminal Law of 1951 is the first codified criminal law, however, there are also other statements in literature claiming that codification was present fifty years earlier with the adoption of the first Criminal Law of 1896. The third stage of the development of Bulgarian criminal law is related to the adoption of the Constitution in 1971, preceded by the adoption of the Criminal Code in 1968.

In this part, the necessary attention has been given to the dynamic events that took place about eighteen years after the Liberation of Bulgaria until the formulation of the first Bulgarian criminal law, which predetermined the paradox of applying the provisions of the Ottoman Empire Criminal Law (ECL) of 1858 on the territory of Bulgaria. Chapter one is divided into five paragraphs with the relevant thematic titles.

### **§ I. General remarks on the legal framework of crimes against marriage and family in Bulgarian criminal law**

This paragraph interprets the content of ECL and makes a comparison between texts of ECL and the crimes against marriage and family.

### **§ II. Criminalisation of the deeds in the first Bulgarian Criminal Law of 1896.**

This paragraph is dedicated to the crimes against marriage and family according to the first Bulgarian Criminal Code of 1896. The text starts with the specific structure and content of the Criminal Code of 1896. Then, it continues with a discussion of the individual criminal deeds and their characteristics from objective and subjective point of view. The comparison between the provisions of the Criminal Law of 1896 and the Criminal Code of 1968 with respect to the protection of marriage and family shows consistency in the contents, however, it lacks such consistency in the form and structure. Nevertheless, one cannot deny the contribution of the first criminal law to the currently effective legislation in general and in the context of crimes against marriage and family.

### **§ III. Crimes against marriage and family according to the second Bulgarian Criminal Law of 1951.**

The title shows that this paragraph makes an overview of the development of Bulgarian criminal law according to the Criminal Law of 1951. The crimes against marriage and family under Art. 286 through Art. 290 of the Criminal Law have been discussed. The necessary attention has been given to the object, the objective party, the subject and the subjective party for each of the crimes.

### **§ IV. Current legal framework for crimes against marriage and family in the existing Criminal Code**

This paragraph makes an overview of the legislative changes with respect to crimes against marriage and family that have taken place over the past few years. It can be claimed that the effective Criminal Code has introduced a qualitative change in relation to crimes against marriage and family. This illustrates the legislative policy of the country to counteract and prevent those crimes, particularly crimes against children. It is important to also note the fact that despite the numerous amendments of and supplements to the Criminal Code, a relatively small part of them is related to crimes against marriage and family, which means that the aforementioned provisions correspond to the social reality and have been subject to relatively stable and precise revisions.

### **§ V. Proposals for improvement in the field of crimes against marriage and family in the draft for a new Criminal Code of 2014 of the Council of Ministers.**

This paragraph of the thesis paper presents the legislative trends in the legal framework about crimes against marriage and family in the Draft for a new Criminal Code (DCC). As already noted, the currently effective Criminal Code has undergone a huge number of changes. It is already known that some of these changes created some theoretical unclarities and difficulties in the enforcement. It is also highlighted that the code does not fully correspond to the current socio-economic context and expectations. This gives the ground to discuss the creation of new legislation in the field of criminal law and an overall draft was actually developed about ten years ago. It should be noted that the revision of the new provisions in the draft has taken into account

the legislation of a number of foreign countries and the concept of the state policy in the field of child justice.

## **CHAPTER TWO: GENERAL CHARACTERISTICS AND SYSTEM OF CRIMES AGAINST MARRIAGE AND FAMILY ACCORDING TO THE CRIMINAL CODE OF BULGARIA**

Chapter two is divided into different paragraphs (three paragraphs in total), which discuss the different types of crimes based on the criterion adopted for this group. These are: § I. Crimes against marriage; § II. Crimes against family and § III. Crimes against civil status.

Each paragraph is divided into points (noted with Arabic numbers) where the characteristics of the relevant crimes have been specified. They are analysed by paying the necessary attention to their object, the objective characteristic features, their subject and the subjective characteristic features. The case law related to the matters discussed is mentioned at the specific places of the paper relevant to the topic. A comparison between the provisions in the section about crimes against marriage and family and the provisions about other similar deeds mentioned in the Criminal Code has been made. One such example is the discussion of the understanding that the provisions of Art. 181 of the Criminal Code constitute a special case of exposure to danger. In this context, the differences between the crimes of exposure to danger and the violations against family have been discussed. The claim that Art. 176, paragraph 1 of the Criminal Code should be considered a special case of a false statement is discussed in detail.

**The first paragraph** of this part discusses the characteristics of crimes against marriage. Special attention has been given to the institute of marriage and its protection according to criminal law. In this context, both the national legislation, which guarantees marriage and the conditions for entering into matrimony, and international sources, such as the European Convention on Human Rights, the United Nations Universal Declaration of Human Rights of 1948 and other international legislation have been cited. A definition of marriage is given, which is of an established theoretical significance and the necessary attention has also been paid to the provisions of the Family Code that govern the legal barriers to entering into civil matrimony.

Point 2 of this paragraph consistently discusses the types of crimes against marriage and their specifics, particularly: absconding of a legal impediment to marriage (Art. 176, paragraph 1 of the Criminal Code); forced marriage and kidnapping for the purpose of forced marriage (Art. 177 of the Criminal Code); receiving and giving a ransom for a permission to marry (Art. 178 of the Criminal Code) and the crime of plural marriage (Art. 179 of the Criminal Code). Each of these provisions have been discussed in detail with indication of the typical characteristics of their objective and subjective perspective. The primary, aggravating and incentivising nature of crimes against marriage have been analysed. During the overview of the relevant crimes, proposals de lege ferenda have been made with detailed arguments in this respect. In this relation, the following proposals related to the crime under Art. 179 of the Criminal Code can be mentioned: de lege ferenda, to replace the term “polygamy” in Art. 179, paragraph 1 of the Criminal Code with the adequate term “bigamy” (bigamia), and a proposal to formulate an aggravated offence when the deed under Art. 179 has been committed with mercenary motives.

**The second paragraph** analyses crimes against family. It studies the nature of the following crimes: violation of an obligation to a relative incapable of taking care of themselves (Art. 181 of the Criminal Code); a parent or a guardian failing to provide sufficient care (Art. 182 of the Criminal Code); preventing the enforcement of a court ruling related to exercising parental rights (Art. 182, paragraph 2 of the Criminal Code); convincing a parent to abandon their child or give consent for the child’s adoption, as well as convincing an under-age person to give consent for adoption (Article 182a, paragraph 1 and 2 of the Criminal Code); illegal agency related to the adoption of a child; problems with the so-called surrogacy arrangement (Art. 182a, paragraph 3 of the Criminal Code); consent given by a mother to sell her child in Bulgaria or abroad (Art. 182b of the Criminal Code) and failure to fulfil an obligation to pay support to a close relative (Art. 183 of the Criminal Code). This paragraph provides an in-depth and spatial analysis of each of the crimes mentioned. It should be noted that this part provides an analysis of important crimes that have not been discussed even in more recent studies. Such are, for example, the crimes of convincing a parent to abandon their child or give consent for the child’s adoption, as well as convincing an under-age person to give consent for adoption (Article 182a, paragraph 1 and 2 of the Criminal Code), the crime of illegal agency related to the adoption of a child (Art. 182a,

paragraph 3 of the Criminal Code) and the crime of consent given by a mother to sell her child in Bulgaria or abroad (Art. 182b of the Criminal Code).

Furthermore, the necessary attention has been given to the legislative changes concerning Art. 177 of the Criminal Code. As a justification of this legislative change, the Act Amending and Supplementing the Criminal Code highlights that although the Criminal Code criminalises forced marriage, it still does not envisage criminal liability in the cases of a person leaving the territory of the country for the purpose of forced marriage or living together with another person based on consensual union. The amendment of Art. 177 of the Criminal Code aims to provide effective protection for the potential victims of forced marriage, who may be forced by their families to leave their country of residence in order to enter into matrimony in the country of origin of their family. These are, in brief, the reasons for undertaking the changes to the abovementioned provisions. It should be noted that there are similar recommendations in the Council of Europe Convention on preventing and combating violence against women and domestic violence drafted on 11 May 2011 in the city of Istanbul and signed by the Republic of Bulgaria on 21 April 2016 (the so-called Istanbul Convention). It should be recalled that the Constitutional Court of the Republic of Bulgaria ruled that its provisions are in conflict with the Constitution of the Republic of Bulgaria. On the other hand, the provision of Art. 37 of the Convention is dedicated to forced marriage. Point 1 recommends that the parties should take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised, whereas point 2 recommends that the intentional conduct of luring an adult or a child to the territory of a party or state other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised. The content of the provision is related to criminal luring of a person that is already located on the territory of a state other than the state of his or her origin to force this person to enter into a marriage.

Based on the analysis, it has been suggested to propose the repeal or qualitative amendment of the provisions of Art. 177, paragraph 3 through paragraph 5 of the Criminal Code.

Next, an important issue in the contents of this paragraph is the question about surrogacy. This phenomenon has been discussed in detail by presenting the relevant types of surrogacy, its

purpose and social importance. This question is also discussed from the perspective of criminal law with the necessary proposals for optimising the Criminal Code.

The **third paragraph** is dedicated to crimes against civil status. This part of the thesis paper analyses the characteristics of the crimes referred to as absconding or replacement of someone's civil status (Art. 184 of the Criminal Code); arbitrary taking or retaining someone else's minor child (Art. 185 of the Criminal Code) and taking of a foundling or someone else's lost child aged below 7 years (Art. 186 of the Criminal Code).

Special attention is paid to the fact that the provisions under Art. 184 of the Criminal Code say that the victim of the crime can be both a young child and any other natural person, with no specification of any age in the text. When the victim is a child, it is described as a "young child". Anyway, after taking Art. 185 and Art. 186 of the Criminal Code into consideration, we can assume that a young child should mean both a newborn and an infant until the age of one, however, with a view to what has been stated above, it can be proposed to specify the age of the "young" child with sufficient clarity in Art. 184, paragraph 1 of the Criminal Code *de lege ferenda*, as is the approach with the other types of crimes against a person's civil status. In the overview of the characteristics of this type of crime, a case from 2022 that was disclosed in the public domain in the country is mentioned, which concerns the exchange of two newborn girls in the neonatology department of a large hospital in Sofia. This information gave rise to serious discussion in society on topics related to postpartum care in our country, as well as liability in the case of violations committed by physicians or obstetricians. Based on the foregoing and particularly for the purpose of improving the legal framework, it would be good to propose a new aggravating circumstance *de lege ferenda* in the case where the subject is a healthcare professional. For example, section 213 of the Criminal Code of Hungary envisages criminal liability for violations related to the family status, with a heavier penalty when the subject of the crime is a healthcare provider.

Further in this paragraph, a distinction between "violence", "threatening" and "fraud" is made as part of the discussion about the forms of aggravated deed of the crime under Art. 185, paragraph 2 of the Criminal Code. It is mentioned that the term "violence" means use of physical force,

whereas “threatening” requires a mental impact and therefore it is justified to refer to those crimes by using the joint term “coercion”. Regarding the third aggravating circumstance, it turns out that the term “fraud” lacks precision. It is known that the concept of “fraud” itself is used for naming the classical crime of the same name. Therefore, it cannot be accepted that there is precision and justification in also using the same term as a form of aggravating full offence circumstance. Such role can be played by some of the typical terms for fraud, such as the term “deception”. Thus, it would be natural and logical to also overcome this drawback with respect to other types of crimes de lege ferenda by using the abovementioned term and, respectively, to provide for a heavier penalty for this type of deed when it has been performed not through “fraud”, but rather through “deception”.

### **CHAPTER THREE: INTERNATIONAL CRIMINAL LAW REGIME OF CRIMES AGAINST MARRIAGE AND FAMILY**

**Chapter three** of the thesis paper discusses crimes against marriage and family through the prism of international criminal law. The study of the international legal framework of crimes against marriage and family can lead to the conclusion that the violations related to these criminal deeds are organised in several different ways. First, there are EU member states where the respective deeds are structurally arranged in the same or similar way as they are in the Bulgarian Criminal Code. Second, in other EU member states these crimes have a wider scope and a distinctive feature of them is the presence of diverse provisions for violations against children. Third, it is obvious that the criminal law of certain European countries lacks any provisions about crimes against marriage. The framework of criminal law in countries outside the EU demonstrates certain differences and specifics that need to be discussed in separate analyses and contemplations. This is because of their belonging to different legal families, such as the Roman-German and the English-American family.

Based on these considerations, this chapter is divided into two paragraphs as follows: § I. Criminal law in the field of crimes against marriage and family in member states of the European Union and § II. Criminal law in the field of crimes against marriage and family in countries

outside the European Union. The criteria for such differentiation is not just Bulgaria's membership in the EU, but also the main type of legal family the national legal frameworks belong to.

The **first paragraph** is dedicated to the legal framework of crimes against marriage and family under the Criminal Code of Germany (Strafgesetzbuch StGB), the Penal Code of France (Code penal – France) and the Criminal Code of the Republic of Greece. The overview of crimes against marriage and family in those states demonstrated mostly similarities rather than differences in the approach of criminal law with respect to those crimes. There was a specific provision that was distinguished as one of particular interest – the abandoning of a pregnant woman – Art. 359 of the Greek Criminal Code, which is absolutely unheard of in Bulgarian legislation. The provision concerns the abandoning of a pregnant woman when the latter cannot take care of herself because of her condition of pregnancy or because of giving birth. This provision has created a guarantee under criminal law for the life and health of a woman during the period of pregnancy and the postpartum period. This crime is in the category of formal crimes, because no consequences have been envisaged. The provision does not foresee any particular characteristics of the subject of the crime, who can be either the husband or other person bearing criminal liability, who has lived in consensual union with the victim.

The **second paragraph** discusses criminal law in the field of crimes against marriage and family in countries outside the European Union. Section one of this paragraph makes an overview of the development trends of these crimes in the USA. A significant issue is the crime known as “buying a child”. This is also something unheard of in Bulgarian criminal law, which makes it incomplete and generally ineffective. Based on the analysis of crimes against family in the Criminal Code of the state of Texas, it was concluded that a large part of them are also present in our currently effective Criminal Code, however, the provisions are mentioned at different places. For example, the kidnapping of a child, which constitutes a crime against family in the Criminal Code of the USA, is not considered to be the same type of crime under our Criminal Code. The situation with the three provisions related to violation of a protection order for a victim of violence (sexual, physical or emotional violence) is similar. It needs to be noted here that the Criminal Code of the Republic of Bulgaria contains provisions about a crime known under the

name “failure to comply with a protection order against domestic violence”. The latter, however, is currently not part of the crimes against marriage and family, even though the object of protection is precisely family relationships. Therefore, it has been proposed de lege ferenda to create an additional paragraph to the text of Art. 182 of the Criminal Code describing the crime of failure to comply with a protection order against domestic violence.

Section two discusses the crimes against marriage and family under the Criminal Code of Russia (“УГОЛОВНЫЙ КОДЕКС РФ”). According to the Criminal Code of Russia, this group of crimes includes illegal deeds known as involvement of an under-age person in the commitment of a crime, and sale of alcoholic beverages to an under-age person. At present, these deeds are also criminalised in our country, however, they are stated in the provisions of Art. 189 and Art. 193 of the Criminal Law as crimes against youth. Next in the Russian Criminal Code is the crime of replacing a child and two provisions about illegal adoption. The equivalent provisions in our Criminal Code that can be mentioned are those under Art. 182a, paragraph 1 and 2 of the Criminal Code. Revealing the secret of adoption is also a crime against family under the Criminal Code of Russia. The paper mentions the fact that this crime is also covered by our Criminal Code, however, from a systematic point of view, it is not included in the provisions about crimes against marriage and family, but in Chapter II, Section VI, Art. 145, paragraph 2 of the Criminal Code, which is the chapter about offences against the person. Other typical crimes of this type according to the Criminal Code of Russia are failure to fulfil an obligation to take care of a child and failure to pay child support or support to disabled parents.

## **CONCLUSION**

The conclusion of the thesis paper makes a summary of the distinct characteristics and problems of protection of marriage and family under criminal law. The conclusion structures the full and overall analysis of crimes against marriage and family and based on the study that has led to the conclusion about the need of changes, the proposals de lege ferenda to improve the legal framework concerning this group of crimes have been outlined.

### III. SCIENTIFIC CONTRIBUTION OF THE STUDY

The actual elaboration on the topic starts with a general analysis of the legal framework about crimes under Art. 176-186 of the Criminal Code. The interpretation of the different criminal offences against marriage and family takes a central role in the thesis paper. The discussion about these crimes is completed with the proposals *de lege ferenda* at the relevant thematic sections, the objective of which is to improve, refine and optimise the legal framework concerning these crimes.

The proposals drawn are in line with the contemporary trends, the socio-economic context and the social needs. They could also be useful for the case law for resolution of certain matters related to the application of the provisions and norms about this group of crimes.

The scientific novelty in this thesis paper is the in-depth analysis of the objective and subjective characteristics of some of these crimes, such as, for example, the crimes under Art. 182b of the Criminal Code and Art. 182a, paragraph 3 of the Criminal Code, which is a novelty for theory.

Thus, the following contributions and specific proposals **de lege ferenda** can be mentioned:

- De lege ferenda to create a separate aggravated offence for some of the crimes against marriage and family when the deed has been committed “in the context of domestic violence”;
- To propose the repealing or qualitative amendment of the provisions of Art. 177, paragraph 3 through paragraph 5 of the Criminal Code;
- To replace the term “polygamy” in Art. 179, paragraph 1 of the Criminal Code with the more adequate term “bigamy” (bigamia);
- To formulate an aggravated offence when the deed under Art. 179 of the Criminal Code has been committed with mercenary motives;
- To discuss the eventual decriminalisation of Art. 181 of the Criminal Code or sanctioning the deed as an administrative offence. For this purpose, the necessary legislative changes in the Family Code should also be implemented, in addition to the ones concerning the Criminal Code;

- Because of the high public danger associated with these deeds related to using a child for begging, it would be good to think about the possibility de lege ferenda to criminalise these deeds even in the case of negligent form of guilt;
- In the future, the possibility to envisage an additional aggravated offence should be considered for the cases where the subject convincing a parent to abandon their child is a person that is a healthcare professional in the field of maternity care or postpartum medical care;
- To envisage de lege ferenda the possibility for formulation and ensuring the necessary protection under criminal law with respect to offences related to surrogacy. For now, however, with a view to de lege lata, the introduction of higher liability for agency for adoption can be proposed, when the agent is a person that is a healthcare professional or a person from a hospital's maternity ward;
- To increase the effectiveness of criminal law and the counteractions against the agreement for disposal with one's own child in the country or abroad for mercenary motives, the following proposals de lege ferenda can be made: to extend the circle of persons bearing criminal liability under Art. 182b, paragraph 1 of the Criminal Code. In addition to the child's mother, criminal liability can be also envisaged with respect to the male parent, which can be achieved by replacing the phrase "a female person" by the shorter, but more adequate term "parent".
- An additional subjective element – mercenary motives should be introduced for improving the provisions of Art. 182b of the Criminal Code as these are inherently related to those provisions because they concern a transaction that is both illegal and immoral;
- In addition to that and with a view to ensuring that children live and grow in their biological family, not only the transfer, but also the "buying of a child" should be classified as a crime;
- The possibility for ruling out criminal liability for the crime under 183 of the Criminal Code should not be excluded, but rather administrative criminal liability de lege ferenda should be envisaged.
- The age of the "young" child under Art. 184, paragraph 1 of the Criminal Code should be specified with sufficient clarity, as is the approach for the other types of crimes against a person's civil status;

- Based on the foregoing and particularly for the purpose of improving the legal framework, it would be good to propose a new aggravating circumstance de lege ferenda in the case where the subject of the crime under Art. 184 of the Criminal Code is a healthcare professional;
- To correct de lege ferenda the aggravated offence of “fraud” used with lack of precision in Art. 185, paragraph 2 of the Criminal Code and other provisions of the Criminal Code based on the considerations mentioned.

#### **IV. THEORETICAL AND PRACTICAL SIGNIFICANCE OF THE STUDY**

The results expressed in statements provided for the research paper, the arguments mentioned and the conclusion would be beneficial both for theory and case law, because they constitute a structured approach to studying the provisions related to the protection of marriage and family under criminal law.

In addition, the perspectives indicated for improving the legal framework concerning these crimes can also be used for the further development of research and development on this topic.

The detailed analysis of the different crimes against marriage and family can be also used in the academic process when studying the particular part of “Criminal Law”, more specifically, the part about offences against marriage and family.

#### **V. RESEARCH PAPERS ON THE THESIS TOPIC**

##### **RESEARCH PAPERS:**

1. A research article on the following topic: Surrogacy – a challenge for the legislation of the Republic of Bulgaria. Legal journal of NBU 2020, XVI.3, page 31-47. ISSN (Online): 1314-5797.

2. A research article on the following topic: Crimes against marriage and family before the Criminal Code of 1968. Legal journal of NBU XV.1–3, 2019, page 44-59. ISSN (Online): 1314-5797.
3. A research article on the following topic: CURRENT PROBLEMS IN BULGARIAN CRIMINAL LAW DURING THE PERIOD 2017 – 2018. Yearbook of the Department of Law of NBU, Sofia, 2019, page 392 – 415. ISSN 1314-8087.
4. A research article on the following topic: The provisions about crimes against marriage and family according to the contents of Strafgesetzbuch – the criminal code of Germany – “Norma” Magazine, Sofia, issue No. 9/2017, page 58. ISSN 1314-5126.

#### **PARTICIPATION IN SCIENTIFIC FORUMS WITH RESEARCH PAPERS:**

1. Participation in a seminar for doctoral students during the Third Annual Conference of Doctoral Students of 9 – 11 February 2018, city of Blagoevgrad, with a research paper on the following topic: “Crimes against marriage and family according to the Bulgarian legislation. The necessary changes de lege ferenda”.
2. Auditioning of a Summer School for doctoral students of the Doctoral Studies Centre “St. Kliment Ohridski” in the period 24 – 27 June 2019, Sofia.