

THEORETICAL AND PRACTICAL CONCERNS REGARDING THE CONCEPT OF COMPLEMENTARY PUNISHMENTS APPLICABLE TO NATURAL PEOPLE COMPLIANT TO THE REGULATIONS OF THE NEW CRIMINAL LAW

CRISTINA DANIELA MUNTEANU*

Abstract

By this study we proposed to analyze the concept of complementary punishments applicable to natural people compliant to the regulations of the New Criminal Law, motivated by the numerous significant amendments brought in by the above mentioned writ, such as: deduction of the peak limits of the punishments from 10 to 5 years, increase of the number of the rights part of punishments' content, significant increase of punishments' field of incidence by introducing some of the safety orders into complementary punishments' category (prohibition of entering certain cities, foreigners' deporting, prohibition of returning to family's residence for a certain period), the facility to advertise natural person's Court Final Decision of sentencing, as well as many other news we intend to present in the present article.

Keywords: *complementary punishments, new regulations, natural people, military degradation, sentence publication.*

Introduction

New elements, regarding the complementary punishment, can be identified in the new Penal Code, starting from the setting of this punishment place in Article 55 Penal Code, respectively after accessory punishment, as a following to a natural punishment reordering, reported to the moment of their application and execution.

Expanding the scope of complementary punishment from 5 to 15 variants of complementary punishments demonstrates the penal policy orientation towards an accentuated individualization of punishment by adding to the main punishment certain appropriate complementary punishments according to the penalty level, the gravity of the offense, the specific circumstances when the criminal act was performed, and the offender with his/her level of responsibility, understanding, education and training, prior criminal experience, or membership in another legal culture of another country.

Furthermore, part of the sanctions representing safety measures in the previous legislation respectively „prohibition to be in certain localities”, „foreigners' deporting” and „prohibition to return to the family residence for a certain period” were introduced in the complementary punishment content, considering that these measures have and increased restrictive character for the freedom of movement. However by applying these measures, the prevention of committing new crimes is realized, by indirectly removing the danger state, by removing the offender from the criminal field.

The applicability scope broadening in comparison to the old criminal law is given by the possibility of the measure disposing both regarding the imprisonment, regardless of duration, but also to the penalty fine.

*Assistant., Ph.D. candidate at Faculty of Law, “Nicolae Titulescu” University, Bucharest; Lawyer; (e-mail: av munteanu_cristina@yahoo.com).

Eliminating the provision on the punishment of at least 2 years to implement a complementary punishment, made the current criminal law more flexible and adaptable, so the detailed assessment of the nature, gravity, offense circumstances and offender becomes possible.

Changes regarding the beginning of the complementary punishments execution were made, following the introduction of penalty fines, and criminal punishments which can be executed with suspension, to which one can apply a complementary punishment. Thus, if the previous Penal Code conditioned the existence of an imprisonment sentence of at least two years to apply the complementary punishment, in case of fine or suspension of sentence under supervision, the complementary punishment of prohibiting the exercise of rights **begins from a final conviction decision.**

In the current regulation the complementary punishments are particularly development in content, and also as number by introducing "the sentence publication" as complementary punishment.

Publication of the final sentence, as new complementary punishment, develops the court's capacity to draw the public and offender's attention with a clear message of justice, as well as satisfying the injured party regarding the moral readjustment due to him from effects of carrying the offense.

As historic element we can show that publication of the sentence recurs in our country, following to this measure the reassessment in the Penal Code of 1936 (Articles 61 - 62) when it applies only to the legal person.

Furthermore, regarding the military degradation we consider that many problems in jurisprudence should be solved, at some of them a unitary solution not being applied for the moment.

Since the complementary punishment for rights prohibition requires an extensive, thorough, detailed analysis, we will limit our analysis only upon complementary punishment of military degradation and the new complementary punishment, respectively the publication of the sentence in case of individuals.

1. Military Degradation

1.1. Definition and Punishment Content

In accordance with art. 69 in the new Penal Code, the complementary punishment for the military degradation consists in the loss of military degree and the right to wear uniform from the moment the sentence becomes final.

The military degradation is compulsory applied to military prisoners in active military service, reserve or retired, if the main penalty imposed is imprisonment exceeding 10 years or life in prison.

The military degradation can be applied to military prisoners in active military service, reserve or retired for crimes committed with intent, if the main penalty imposed is imprisonment for at least 5 years and not more than 10 years.

The military degradation is a complementary punishment that applies in case of committing criminal acts of extreme gravity.

In the first paragraph of the commented text, the legislator identifies the subject of legal compulsion for the application of this complementary punishment.

The gravity of this punishment provided that over time, in some cases, was regulated even as the main punishment. According to art. 253 in the Military Justice Code in 1873 (in force until 1937) the punishment was ... "by military degradation.. fraudulent stamps and seals usage, etc ... harmful to the state or military rights or interests".

Since by Decree no. 212 dated June 17, 1960, Art. 481 in the Code of Military Justice in 1937 was repealed, Articles 62 item 1 and Article 62 item 2 were introduced in the 1968 Penal Code, by

which the military degradation punishment was applied; in the first article the military categories of all grades and crimes were enumerated. For which, in case of conviction, the military degradation was imposed, and in the second the military degradation¹ effects were presented.

The 1968 Penal Code brings modifications to simplify and clarify its rules, stipulating by art. 67 para. 1 the content and effects of military degradation. It also establishes for the first time the mandatory and voluntary nature of military degradation.

Must be seen the fact that, firstly, there was a resignation of the system for the crime determination to which the military degradation can be applied by the enunciation of their juridical qualification, adopting the punishment value criterion.

Second, the unfair legal treatment was removed, preserving in our criminal law, the provision under which the complementary punishment of military degradation will apply to reservists as well. It was taken into account the fact that it was not just that for the same criminal act a military should be punished, besides the main imprisonment, also the military degradation, and the reservists to perform only imprisonment, maintaining their level of military under reserve. In the application of the military degradation the reservists were assimilated with active military personnel, because the gravity of the acts committed imposes in their case as well the application of the complementary punishment in debate². In the 1936 Penal Code, the military degradation, as it was regulated in art. 62 item 1 and 62 item 2, was applied only to military reservists.

The result is that the military degradation effect – alienation from the army and the loss of military degree for the active military, as well as for the one in reserve, was regulated for the first time in the 1969 Penal Code.

In doctrine, till the enforcement of the 2009 Penal Code, there were numerous discussion according to which there is another regulation, besides the provisions in art 62/1 and 62/2, more precise the military categories to whom this complementary punishment can be applied, that needed certain explanations due to the evident legislative incompliance.

Practically, it is related to the provision comprised in art. 69 Law no. 80/1995 regarding the military statute³, revised and completed, which holds the basis for the application of the military degradation in accordance to the conditions foreseen in the penal law to active military, in reserve or retired personnel, condemned by court order to the complementary punishment of military degradation.

According to the mentioned text, there are 3 categories of military personnel to whom this punishment can be applied, that is: active military, military in reserve, and retired military personnel.

Unlike the provisions of art. 67 paragraph 2 and 3 Penal Code results that together with the enforcement of Law no. 80/1995, the military degradation was also applicable to the retired military personnel.

The term “retired military” is explained in art. 42 Law no. 80/1995, including, first of all, the active officers and in reserve, as well as the warrant officers and reserve officer that exceeded the degree age limit for third class in reserve, foreseen in art. 92 and 93, and second, the officers, warrant officers and active officers or in reserve, rated by the medical-military expertise commissions as “unfit for military service, with changes in the military statute”.

A first problem that needed to be solved is if by such law the regime of a certain punishment already foreseen in the Penal Code could be regulated.

The doctrine opinion was affirmative; in the meaning that article 72 paragraph 3 letter f in the Constitution foresees that punishments are regulated through organic law. Nevertheless, Law no. 80/1995 is an organic law, because according to art. 117 paragraph 2 in the Constitution, the statute

¹ VASILIU T. și colab. - The Penal Code of Socialist Republic of Romania, commented and completed. General Part – Stiintific Publishing House, Bucharest, 1972.

² BULAI C.- Romanian Penal Law. General Part, volume II, - Sansa Publishing House, Bucharest, 1992.

³ Law no.80/1995 was published in the Of. G. no. 155/1995.

of military personnel is established by such a law and the regulation of certain aspect related to the complementary punishment of military degradation is in accordance to art. 72 paragraph 3 letter f in the Constitution.

On the other hand it should be noted that the law on the military personnel statute is a non-criminal law, but nothing prevents such law to include provisions of criminal nature as long as it is an organic law, since the Constitution does not contain any provisions by which punishments are to be regulated only through organic laws of totally criminal nature.

In the previous expressed opinions, the correlation would regard, first, the adding of a retired military personnel as a third category to which the complementary punishment of military degradation can be applied, together with military personnel and reservists.

Moreover, it was considered that the expression “military and reservists convicts” comprised in art. 67 in Penal Code should be replaced with “active military personnel” and with “military personnel in reserve”, which are widely explained in Law no.80/1995. This change was considered necessary since the term “military” has a wide meaning, if we consider that it refers to all military personnel⁴ in general.

It appears that the legislator of the 2009 Penal Code took into account all these unconformities and introduced for the first time in the legal standard the provision according to which “military degradation is compulsory applied to active, in reserve or retired military convicts”.

Military degradation is a complementary punishment which consists in the loss of the military degree and the right to wear the uniform.

This punishment has a limited application regarding the offender, the law naturally limiting this punishment application to military personnel and reservists.

The application of the complementary punishment of military degradation is done in case of committing criminal acts with high degree of gravity.

The military degradation punishment is a deprivation of rights punishment, which means the loss of the mentioned rights, unlike the complementary punishment of prohibiting certain rights, which is a restrictive punishment, consisting in a suspension, reducing the applicability of certain rights for a certain period of time (from 1 to 5 years), but not their loss. Thus, the convict is forbidden certain rights expressly foreseen by the law.

The military degradation punishment, under its execution, has a negative content, the execution of this punishment leading to a passive attitude imposed by law to the convict. He is not constrained in doing something; on the contrary, he is forbidden certain rights⁵.

From the nature and content point of view, the military degradation is a determined punishment, in the meaning that the law expressly foresees the object upon which the juridical constraint is realized. The text of art. 67 paragraph 1 in Penal Code clearly mentions which rights are lost, thus limiting this punishment.

With deprivation of specific civic rights, this punishment can be applied only to people who own these rights upon conviction⁶, namely employed military officers or in reserve. By explicit establishing of the lost rights as a following to the military degradation, the offenders to whom it becomes applicable are determined, namely active or in reserve military, meaning those who usually are granted the right to wear military degree and uniform. Regarding the reservists, we consider that this complementary punishment can sometimes affect only the loss of the military degree, the loss of the right to wear uniform or not being granted or not by the retirement Order. In this respect, we consider that if the retirement order does not confer the right to wear the uniform, the applicability of the complementary punishment of military degradation will only consist in the loss of the military

⁴ BUTIUC C. –Military Degradation. Un-correlations – in RDP no. 4/1998, page 37-39.

⁵ DONGOROZ V. si colab. –Theoretical explanations of the Romanian Penal Code. General Part – volume II, second edition, Academia Romana Publishing House, Bucharest, 2003.

⁶ Appeal Court Bucharest, penal decision no. 55/2000, in T. Toader, Penal Law. General Part, page 116.

degree. We consider that the situation is not conferred by the Order of the movement in the right to wear the uniform; the complementary penalty of military degradation will only consist in the loss of the military rank.

The complementary punishment of military degradation consisting in the loss of military degree and the right to wear a uniform, consists in the loss of any military degree, including the soldier one, because this is a military degree and it assumes the right to wear the uniform⁷.

If this quality got lost during the activity, by changing the police or penitentiary personnel statute, this complementary punishment can only be applied for the reserve or retired⁸ periods. The loss of the military degree amounts some material effects regarding its financial value to be paid till the moment of the rights loss, rights granted for life to the owner. The financial value consists in salary/pension for the military, but also additional income due to military degree. The Penal Code does not contain any mention regarding the loss to the pension right, this problem being fixed by the regulations regarding the pension, where it is clearly foreseen that the right for pension is lost by the one convicted for military degradation⁹. The loss of the right to wear a uniform is referring only to retired or reserve military to whom was granted this right as recognition of personal merits during service. Furthermore the right to wear **only** the military uniform of the service where the military personnel served is regarding its use to special ceremonies and during national holidays, wearing the uniform in different environments being prohibited.

The punishment of military degradation, even if applicable beginning with the decretory conviction **has an absolute privative character**, the punishment of military degradation being taken for undetermined period. By Law 80/1995 art. 71-72 the possibility to overrule the complementary punishment of military degradation by another court decision containing the acquittal or this punishment no longer applies is foreseen; in this case the possibility to re-grant the military degree and change of the military status exists. From here we can see that the effect of the military degradation and the loss of the right to wear uniform are applied for life.

Different opinions were expressed in specialty literature regarding the perpetual and definitive character of military degradation. In this sense, some authors affirmed that complementary punishment of military degradation is definitive and has **perpetual character**, because is valid forever, even after rehabilitation¹⁰.

⁷ Appeal Court Bucharest, section I penal, decision no.42/A/1997.

⁸ **Military Court Timișoara, s.p. 125 dated 20.10.2004**, declined his competency for the cause settlement complaint against N.U.P. resolution in favor of Arad Judicature, and this by civil sentence no. 2561 dated 17.12.2004 declined the competency in favor of Military Court Timișoara with the motivation that the provisions of article 40 Penal Procedure Code are applicable, with the motivation that the military capacity loss previous to the crime performance does not change the court competency, the military court remaining competent, if the deed is related to offender's job description, as in the case presented.

For the competence negative conflict settlement was taken into account the fact that after 90 days from October 3, 2004, when Law 293 dated 30.09.2004 was enforced, the entire military personnel (where the offender was incorporated) form the Penitentiary General Division and the units respondent to it were demilitarized, being granted the public servant statute in the system of the Penitentiaries National Administration.

Î.C.C.J., d.p. 1052 dated 14.02.2005, established the competence in favor of District 2 Judicature, because if some crimes committed by the military personnel maintained in the military instances competence, after the enforcement of Law no. 293/2004 the active law would denaturize, as well as the juridical regulations that follow the adoption of national legislation to the European Commission Legislation.

The provisions of art.40 para. 1 letter a) Penal Procedure Code are not applicable, because they assume the loss of a capacity owned at the date of the crime performance to be liable to other reasons than the legislator will.

⁹ OANCEAI. –Penal Law. General Part – Didactica si Pedagogica Publishing House, Bucharest, 1971.

¹⁰ DOBRINOIU V., BRANZA W. - Penal Law. General Part – Lumina Lex Publishing House, Bucharest, 2003, page 429; BASARAB M. and co.,- Penal Code commented. General Part, - Hamangiu Publishing House, volume I, Bucharest, 2007, page 379; BASARAB M.- Penal Law. General Part, Discourse – Lumina Lex Publishing House, volume I, Bucharest, 2005, page 288; VASILIU T. and co. - Penal Code of Socialist Republic of Romania, commented and completed. General Part – Stiintific Publishing House, Bucharest, 1972; BULAI C., BULAI B. –Penal Law

Opinions were mentioned about the nature and its content, the military degradation is a determined punishment, and under its duration is a perpetual punishment, in the meaning that the law does not foresee the limit of its duration, the convicted being expelled from the army in a definitive way and losing his military degree¹¹. It was considered that the effects of military degradation continue to exist even after the convicted rehabilitation, because, as the law foresees, the rehabilitation is not followed by the obligation to be reinstated in the position held prior to conviction or to be called in the army permanent existent personnel, or to be granted the lost military degree¹².

We approve the opinions according to which the complementary punishment of military degradation **does not have a definitive and perpetual character**, because by rehabilitation, the convicted to this punishment regains the right to accede to the military position by following the steps required by the law¹³. Thus, we consider that after rehabilitation the convicted becomes up for accession to the military position.

Considering the fact that the court cannot cleave the punishment content when its application is performed, the military degradation has a punishment character with irreducible content, the rights foreseen in the text forming an impartible complex of rights.

2.2. Applicability conditions

The military degradation has a compulsory or discretionary character.

According to art.69 para. (2) in the new Penal Code, the military degradation is **compulsory** applied in the case this complementary punishment is applied together with the main punishment, that is imprisonment for more than 10 years or imprisonment for life¹⁴.

The **discretionary** application, art. 69 (3) in the new Penal Code, can be decided by the court, in the case of military convicts that committed the crime with **intent**, the main punishment being of at least 5 years and not more than 10 years. The discretionary character of this application is *ex lege*, stipulating that military degradation “can be applied”.

It must be noted that, unlike compulsory military degradation, which is conditioned only by the crime quality and the amount or the nature of the established main punishment, the discretionary degradation is conditioned by the subject quality, the crime type and the amount of the main custodial sentence set by judge. In this respect, imperative conditions are required, namely: application of a custodial sentence established by the court and its execution to the form of guilt.

The complementary punishment of military degradation is applied regardless the existence of a certain relation between crime and military position and independent to the case where the offender was or was not in a military position at the date of the crime committal, important being for the subject to have a military position at the time of the conviction. There were many opposite solutions, unfortunately, in jurisprudence, this punishment being automatically applied together with imprisonment for more than 10 years, regardless if the defendant had or not the active or reservist military position¹⁵.

Manual. General Part – Universul Juridic Publishing House, Bucharest, 2007, page 319; BOROI A., NISTOREANU GHE.- Penal Law. General Part according to the new Penal Code, fourth edition, All Beck Publishing House, 2004; PASCUI I. –Penal Law. General Part – second edition, Hamangiu Publishing House, 2009, page 371.

¹¹ ILIESCU N., in DONGOROZ, - Theoretical explanations of the Romanian Penal Code – volume II, second edition, page 90; The Supreme Court of Justice, penal section, decision no. 366 dated February 13, 1998.

¹² BULAI C., BULAI B. – Penal Law Manual. General Part – Universul Juridic Publishing House, Bucharest, 2007, page 320; BULAI C.- Romanian Penal Law. General Part, volume II – Sansa Publishing House, Bucharest, 1992.

¹³ HOTCA Mihai Adrian –Penal Law. General Part – C.H. Beck Publishing House, Bucharest 2007, page 583; BASARAB M.- Penal Law. General Part. Discourse – volume I, Lumina Lex Publishing House, Bucharest, 2005, page 288.

¹⁴ Appeal Court Bucharest, Section II penal, decision no. 13/2004, Practica judiciara penala 2006, pag.86;

¹⁵ Penal Section, no. 114/2009, not published; Appeal Court Ploiesti, penal decision no. 185/A/1998, commented in CRISU S and CRISU E. –Penal Code completed with judicial practice 1989-1999, Argessis Print Publishing House, 1999, page 204.

Being conditioned not by the main punishment foreseen by law, but by the main punishment established by the court, the military degradation was not registered in the incrimination special standards, as the prohibition of certain rights¹⁶ has been registered.

The complementary punishment of military degradation can be established by the military courts and by the civil courts (when they are trialing crimes performed by the offender before having obtained the military position).

Being conditioned by the amount of the main punishment to which it is added, the legislator did not foresee the military degradation for the different crimes attracting the application of this punishment.

What must be remembered is the fact that the military degradation, as well as the prohibition of certain rights complements the main punishment when the court appreciates as necessary the replenishment of direct repression and is functioning together with the main punishment, sometimes for the same crime being applied more complementary punishments (for instance, in case of real crimes, different complementary punishments or even the same type of complementary punishments but with different content, are applied together with the custodial punishment to be executed by the convict). Ultimately, the complementary punishments regarding the penal sanctions as main punishments, answers to the general prevention and special prevention functions, in a greater extent for the latter, the convict executing the complementary punishment being put, in certain cases, in the situation of not committing another crime.

Execution of military degradation takes place immediately after issuing a final conviction sentence, the loss of military degree and the right to wear a uniform, becoming valid from the moment in which the conviction decision becomes *res judicata*, a situation presented as a rule exception case, according to which the complementary punishments start after completing the main custodial punishment to which is added¹⁷.

2. Sentence Publication

In accordance to the provisions of art. 70 in the new Penal Code the publication of a final sentence can be issued at any time, considering the nature and gravity of the crime, the circumstances and the convict, the court considers the publication will also help to prevent the perpetration of other crimes.

The sentence decision is published in an excerpt, in a regional or national newspaper, once. The final conviction sentence is done on the convict's expense, without disclosing the identity of others.

2.1. Concept and Punishment Content

For the first time in our penal legislation the possibility of publishing the definitive penal decision in case of natural people is institutionalized, not having a correspondent in any of the precedent regulations. This complementary punishment, in the previous Penal Code, was foreseen, in a specific frame, only for legal people.

By the establishment of these complementary punishments the increase of the justice's message efficiency was expected, but also to provide moral readjustment to the injured person¹⁸.

However, the Penal Code aims to provide the judge a wide range of measure that, by flexibility and diversity, can allow a better judicial individualization. Thus the incidence of complementary punishments, the number of rights contained in the punishment were significantly

¹⁶ UNGUREANU A. - Romanian Penal Law. General Part – Lumina Lex Publishing House, Bucharest, 1995.

¹⁷ GIURGIU N. –Liability and Penal Law sanctions – Neuron Publishing House, Focsani, 1995, page 114; VOLONCIU N., MOROSANU R., Penal Procedure Code commented – Hamangiu Publishing House, 2007, page 47.

¹⁸ HOTCA M.A. –The new Penal Code and the previous Penal Code. Different aspects and transitory situations – Hamangiu Publishing House, 2009, page 74.

extended, and a new type of punishment was introduced, respectively the publication of the definitive conviction sentence¹⁹.

The conviction sentence is **established by the court** taking into account the nature and gravity of the crime, the circumstances and the convict, in relation to its effectiveness to prevent the perpetration of such crimes, but also to provide moral readjustment to the injured person.

We consider that this punishment must be applied for the crimes with high gravity, which attract public disapproval, without making use of its implementation together with crimes of lower gravity. The basic argument of this reasoning lies in the fact that applying this punishment including crimes with lower gravity has as consequence a harder reintegration in the society of the convict, despite the positive effects in term of punishment goal.

Publication of the sentence is a great **moral punishment** with powerful intimidating effect if the offender is notorious in the respective region; the criminal deeds produced a major impact at public opinion level or in the case where the nature and gravity of crime presented high interest to the community. In such situations, the sentence publication has a greater effect regarding the convict, but by the power of example the case can contribute to the prevention of such crimes.

The complementary punishment of the sentence publication is a penalty involving loss of civil rights, the convict being disapproved by the public. Such sanction can have a strong discouraging effect, forming a real denigration made on personal expense, meant to warn the public opinion about the convict's criminal activity.

In this respect, the complementary publication of the conviction sentence is a punishment with positive effects in terms of punishment goal, altering the image of the convicted person. It is a punishment that provides a strong general prevention, taking into account the prevention of committing new such crimes.

2.2. Application Conditions

Punishment is applicable for intended crimes and for crimes on guilt and it regards all natural people with penal liability, and there are no individuals excepted from this punishment. The sanction has discretionary character for the court, its application being debated from case to case, according to the crime nature or gravity, the circumstances it occurred in and the potential impact of the negative publicity made in this way²⁰.

The court may decide to publish the sentence in excerpt, in a form in which the content is clear and understandable to the public, in a very visible form of exposure and impact (on the first page, with a certain print format, pre-established letters size or table), within the pages of a regional or national newspaper. Regarding the display, it is obvious the legislator refers to the way the natural person is obliged to ensure the sentence decision display, respectively the announcement format, the dimensions must be established as to allow the announcement observation and reading by the people reading the regional or national newspaper. In order to achieve the sanction finality, the publication should include a brief presentation of the facts, as it was apprehended by the court, as well as the elements of the decision.

Unlike the complementary punishment of the displaying or publishing the conviction decision in case of legal persons which are made on a period of one to three months, in case of a natural person it will be published once. This way, the legislator characterizes this complementary punishment as determined punishment, although it appears to be an undetermined punishment.

Publication of the conviction final decision is made on the convict's expense.

Publication of conviction sentence must not prejudice the injured subjective rights, reasons for which by the sentence publication cannot be revealed the injured people identity, except the cases where the agreement of the injured or his/her legal representative agreement exists. The law also

¹⁹ Reasons report of the new Penal Code, published on the Representative Chamber site – <http://www.cdep.ro/proiect/2009/300/00/4/em304.pdf>.

²⁰ ANTONIU G. and co.- The new Penal Code – volume III, C.H.Beck Publishing House, 2008, page 189.

regulated the situation when in the circumstances more people are involved, being also protected regarding their right to a personal life, their identity not being revealed.

This complementary punishment for natural people is new, so the courts are about to develop their practices in the situations where such penalty can be applied together with the main punishment. The efficiency of such complementary punishments for legal people, represented by natural people, led to the conclusion of the measure application straight to the responsibility of the natural people.

The conviction sentence publication is enforced by sending the extract in the form established by court, to a regional newspaper appearing in the district court that pronounced the sentence, or to a national newspaper for publication, on the convict's expense.

Considering the provisions of the Penal Code foresee the application of complementary punishments in the situation where the main punishment is imprisonment and in the situation where the main punishment is a fine, we consider as necessary the introduction of the regulation regarding the prohibition of exceeding by publication costs the value of the fine applied to the natural person for the committed deed (source of inspiration could be the provisions in art. 131-35 French Penal Code).

In case of malevolent punishment failure, the judged assigned with its execution can consider fulfilled the constitutive elements of the penal sanctions non-performance crime foreseen and punished by art.288 para. (1) Penal Code, crime punished with imprisonment from 3 months to 2 years or with fine. According to the provisions of art.554 Penal Procedure Code he may approach the court that will proceed according to the provisions of art. 595 and art.596 Penal Procedure Code.

Conclusions

The new Penal Code aims to provide the judge a wide range of measures that, through flexibility and diversity, can allow a better judicial individualization. In this respect, the incidence was significantly extended for the complementary punishments and the number of rights under the punishment content, and a new type of punishment was introduced, respectively the publication of the conviction final sentence.

This complementary punishment for the natural people is new, so the courts are about to develop their practices in the situations where such penalty can be applied together with the main punishment. The efficiency of such complementary punishments for legal people, represented by natural people, led to the conclusion of the measure application straight to the responsibility of the natural people.

We consider that the regulations enforced by the new Penal Code regarding the complementary punishments are meant to ensure a better punishments' individualization, so as to avoid as far as possible the non-unitary solutions of jurisprudence.

References:

- ANTONIU G., DANES S., M.POPA, *Penal Code with addition explanations for everyone's comprehension*, sixth edition, Societati Tempus Publishing House, Bucharest, 1996;
- ANTONIU G., and co., *The new Penal Code*, volume II, C.H.Beck Publishing House, Bucharest, 2008;
- ANTONIU G. and co., *Preliminary explanations of the new Penal Code*, Universul Juridic Publishing House, 2010;
- ANTONIU G., *Penal sanction. Concept and guidance*, Law Magazine no. 10/1981, page 3;
- BECCARIA C., *Crimes and punishments*, Rosetti Publishing House, Bucharest, 2001;
- BOROI A., *Penal Law. General Part according to the new Penal Code*, C.H.Beck Publishing House, 2010;
- BOROI A., *Penal Law. General Part*, C.H.Beck Publishing House, 2006;
- BOROI A., NISTOREANU GHE., *Penal Law. General Part according to the new Penal Code*, fourth edition, All Beck Publishing House, 2004;
- BASARAB M., *Penal Law. General Part. Discourse*, volume I, Lumina Lex Publishing House, 2005;

- BASARAB M. and co., *Penal Code commented. General Part*, volume I, Hamangiu Publishing House, 2007;
- BODORONCEA, KUGLAY, LEFTERACHE, MATEI, NEDELCU, VASILE, *Penal Code commented*, C.H.Beck Publishing House, 2007;
- BULAI C., *Penal Law Manual. General Part*, All Publishing House, Bucharest, 1997;
- BULAI C., BULAI B., *Penal Law Manual. General Part*, Universul Juridic Publishing House, Bucuresti, 2007;
- BULAI C., *Penal Law. General Part*, volume II, Sansa Publishing House, Bucharest, 1992;
- BUTIUC, *Military Degradation. Un-correlation*, RRD no. 4/1998, page 37;
- BULAI C, FILIPAS A., MITRECHE C., BULAI B., MITRACHE C., *Penal Law Institutions*, Trei Publishing House, 2008;
- CRISU A., *Procesual Penal Code*, Hamangiu Publishing House, 2011;
- DIACONU GHE., *Punishment in Penal Law*, Lumina Lex P.H., Bucharest, 2001;
- DIMA T., *Penal Law. General Part*, Hamangiu P.H., Bucharest, 2007;
- DOBRINOIU V., PASCU I., MOLNAR I., NISTOREANU GHE., BOROI A., LAZAR V., *Penal Law. General Part*, revised and completed edition, Europa Noua P.H., Bucharest, 1997;
- DOBRINOIU V., BRANZA W., *Penal Alw. General Part*, Lumina Lex P.H., Bucharest, 2003;
- DONGOROZ V., KAHANE S., OANCEA I., FODOR I., ILIESCU N., BULAI C., STANOIU R., *Theoretical explanations of the Romanian Penal Code. General Part*, volume II, Academia P.H., Bucharest, 2003;
- GIURGIU N.- *Liability and Penal Law sanctions*, Neuron P.H., Focsani, 1995;
- HOTCA M. A., *Penal Law, General Part*, C.H.Beck P.H., Bucharest, 2007;
- HOTCA M. A., *The new Penal Code and the previous Penal Code. Different aspects and transitory situations*, Hamangiu P.H., Bucharest, 2009;
- HOTCA M. A., *Penal Code. Comments and explanations*, C.H.Beck P.H., Bucharest, 2007;
- JIDOVU N., *Procesual Penal Law*, second edition, C.H.Beck P.H., 2007;
- LEFTERACHE L., *Penal Law. General Part*, second edition, Universul Juridic P.H., Bucharest, 2010;
- MAGUREANU I., *Penal Law, General Part*, third edition, Lumina Lex P.H., Bucharest, 2006;
- MERA L., ROG L., SAVONA L., BUDAI R., *Penal Procedure Code*, C.H.Beck P.H., 2008;
- MITRACHE C., *Romanian Penal Law, General Part*, Sansa SRL Publishing House and Press, Bucharest, 1997;
- MITRACHE C-TIN, MITRACHE C., *Romanian Penal Law*, seventh edition revised and completed, Universul Juridic P.H., Bucharest, 2009;
- NEAGU I., *Penal Procedure Discourse, Special Part*, second edition revised and completed, Universul Juridic P.H., Bucharest, 2009;
- NEAGU I., DAMASCHIN M., *Penal Procedure Code, commented and completed*, second edition, Universul Juridic P.H., 2010;
- OANCEA I., *Penal Law, General Part*, Didactica si Pedagogica P.H., Bucharest, 1971;
- PASCU I., *Penal Law, General Part*, second edition, Hamangiu P.H., 2009;
- PASCU I., *Complementary punishment of certain rights prohibition*, Pro-Law no. 3/2004, page 43;
- PASCU I., *Certain rights prohibition. Controverses*, RDD no. 1/2004, page 126;
- PASCA V., *Safety measures. Penal Sanctions*, Lumina Lex P.H., 1998;
- PASCA V., *Constitution and Penal Code*, All Beck P.H., Bucharest, 2002;
- RATESCU C., IONESCU I., PERIETEANU I.G., DONGOROZ V., ASNAORIAN H., POP T.,
- RETCA I., *Complimentary punishment or Complementary punishment*, Penal Law Magazine, no. 3/1999, page 72;
- PAPADOPLU M., PAVELESCU N., *Penal Code Completed*, volume II and III, Libraria Socec P.H., Bucharest, 1937;
- UNGUREANU A., *Romanian Penal Law, General Part*, Lumina Lex P.H., Bucgarest, 1995;
- VOLONCIU N., MOROSANU R., *Penal Procedure Code, Commented*, Hamangiu P.H., Bucharest, 2007.