THEORETICAL AND PRACTICAL CONCEPTS REGARDING THE EXECUTION OF COMPLEMENTARY PUNISHMENTS APPLIED TO NATURAL PERSONS WITHIN THE REGULATION OF THE NEW CRIMINAL LEGISLATION

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„The criminal law without criminal procedure is like a knife without a handle,
And the procedure without criminal law is like a handle without a blade"
MOMMSEN, Droit pénal des Romains

Abstract
In this study we aim at analyzing the complementary punishments applied to natural persons as regulated by the new criminal legislation, our motivation being the numerous amendments brought by the new criminal legislation, respectively the increase of the number of complementary punishments, the change of their enforcement starting moment and such other changes that we intend to debate in this study. Considering the changes brought to the starting moment of the complementary punishment enforcement, we focused mainly on the enforcement and execution of complementary punishments applied to natural persons, exemplifying the execution manner of each punishment, respectively: in the context of applying the complementary punishment regarding the forbiddance of rights, military degradation or the newest complementary punishment to be applied to natural persons, the publishing of the judgment of conviction. The amendments to the starting moment of the complementary punishment enforcement were brought as a result of introducing the punishment by fine and criminal punishments which may be executed on probation, in addition to which a complementary punishment may be applied. Regarding the enforcement of judgments, we have to mention the fact that it constitutes an autonomous stage of the criminal trial, governed by the regulations provided under the Criminal Procedure Act. Nevertheless, not all activities related to the enforcement of judgments are included in this stage, but only the ones triggering the start of the judgment enforcement. Such aspect imposes itself, taking into consideration the distinction between the enforcement of a judgment and the actual execution of the punishment. Regarding the effective execution of a punishment, activity performed outside the criminal trial, it is subordinated, on one hand, to the regulations provided under the criminal law, and on the other hand, to the regulations regarding the execution of punishments and of measures settled by the legal authorities during the criminal trial.

Keywords: *complementary punishments, new regulations, the execution of complementary punishments, forbiddance of rights, publishing of the judgment of conviction*

Introduction

Although the current Criminal Code, adopted through Law no. 15/1968 and effective as of the 1st of January, 1969 was drawn up by the most remarkable doctrinaires of the time (among whom, professor Vintilă Dongoroz, who had a decisive contribution), who instituted significant legal dogmas, fact proven through the constancy of the Criminal Code throughout time, starting with 1990 there was a constant preoccupation for removing the regulations that were incompatible with the requirements under the rule of law, and the changes operated throughout time were not - nor could they be – qualified to determine a structural change in the Romanian criminal regulation.

The criminal sanction regime regulated by the Criminal Code in 1968, submitted to frequent legislative interventions on different institutions, lead to a non-unitary, incoherent enforcement and

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interpretation of the criminal law, which had repercussions over the efficiency and finality of the justice act[1].

Although the punishment categories in the new regulation are the same as in the current Criminal Code, a systematization is made, by using as criteria the order in which such punishments, once applied, are to be executed. This is the reason according to which, as a result of a natural classification of punishments, in relation to their enforcement and execution moment, the primary punishments, the accessory punishments and finally, the complementary punishments are initially incriminated.

The enlargement of the complementary punishments enforcement area, from 5 to 15 complementary punishments, proves the orientation of the criminal policy towards an accentuate individualization of punishments, by adding complementary punishments to the primary punishments, which are relevant in what concerns the type of punishment, the seriousness of the crime committed, the actual circumstances in which the criminal action was committed, but also the criminal, with their level of responsibility, understanding, education and training, previous experience in crime, or affiliation to the legal culture of a different country.

By enlarging the content of such punishment, a better appropriateness of the punishment, in relation to the actual circumstances of the case is accomplished, therefore substantially increasing its effectiveness. Part of the sanctions which, in the Criminal Code from 1968 were found in the safety measures material, were included in the content of the complementary punishment, respectively the interdiction of staying in various localities, the expulsion of foreigners and the interdiction of returning to the family home for a determined period, whereas through their nature, they have a strong punitive pattern, having the main purpose of restricting the freedom of movement and only indirectly, due to this effect, the threat removal and the prevention of a new crime can be achieved. The extension of the enforcement area is also given by the possibility of enacting such measure, both in addition to the punishment of imprisonment, irrespective of the time, and in addition to the punishment by fine.

The elimination of the decision regarding a punishment of at least two years, for the enforcement of a complementary punishment, shall make the criminal law more flexible and more adaptable, therefore it shall allow the thorough evaluation of the type, seriousness, circumstances of the action and of the person committing the crime.

The amendments to the starting moment of the complementary punishment enforcement were brought as a result of introducing the punishment by fine and criminal punishments which may be executed on probation, in addition to which a complementary punishment may be applied. Therefore, if the current Criminal Code conditions the existence of a sentence with the imprisonment for 2 years, in order to enforce the complementary punishment, in case of a fine or of suspension of punishment execution under supervision, the complementary punishment regarding the forbiddance of rights shall commence with the final judgment of conviction moment.

Regarding the enforcement of judgments, we have to mention the fact that it constitutes an autonomous stage of the criminal trial, governed by the regulations provided under the Criminal Procedure Act. Nevertheless, not all activities related to the enforcement of judgments are included in this stage, but only the ones triggering the start of the judgment enforcement. Such aspect imposes itself, taking into consideration the distinction between the enforcement of a judgment and the proper execution of the punishment.

Regarding the actual execution of a punishment, activity performed outside the criminal trial, it is subordinated, on one hand, to the regulations provided under the criminal law, and on the other hand, to the regulations regarding the execution of punishments and of measures settled by the legal authorities during the criminal trial. Also, within the activity of enforcement of criminal and judicial fines, the rules provided in the financial law are applicable.

[1] Elaboration of arguments, of the new Criminal Procedure Act.

1. The enforcement regime of the complementary punishment regarding the forbiddance of certain rights

The new legislative regulation brings two new moments from which the complementary punishment regarding the forbiddance of rights starts: from the final judgment of conviction to punishment by fine and from the final judgment of conviction through which the suspension of the punishment execution under supervision has been decided [art. 68 paragraph (1) letters a) and b) from the Criminal Code].

Therefore, the new Criminal Code provides that the execution of the forbiddance of rights punishment starts in three different moments during the trial: from the final judgment of conviction to punishment by fine; from the final judgment of conviction, through which the suspension of the punishment execution under supervision was decided; after executing the imprisonment punishment, after absolute pardon or pardon of the remaining sentence, after completing the limitation term for the punishment execution or after the expiry of the supervision term for probation.

The first starting moment of the complementary punishment enforcement is the **final judgment to punishment by fine.** In case of a judgment to the punishment by fine, the complementary punishment regarding the forbiddance of rights shall be enforceable starting with the final judgment of conviction. In this case, the convict shall be forbidden to exercise such rights immediately after the final judgment of conviction, although the primary punishment was not executed yet or shall be executed in time, through the deferred payment of an amount constituting the scope of the criminal fine. Such provision is justified through the type of primary punishment. The convict, by not being deprived of freedom, would have the possibility to move and perform any activity, to exercise a right, after all, including those for which the temporary restriction would be necessary[2].

The second starting moment of the complementary punishment enforcement is in the **context of a final judgment of conviction deciding the suspension of the punishment execution under supervision**. The suspension of the punishment execution under supervision interferes when the primary punishment is considered to have been executed, but not in the moment of the rehabilitation by right, as provided in the current Criminal Code. This regulation is justified in the context in which, until the repeal of the suspension of the punishment execution under supervision, the convict has already executed part of the complementary punishment regarding the forbiddance of rights. After executing the punishment of imprisonment, applied as a consequence of replacing the fine or after repealing the suspension of the punishment execution, the convict shall continue the execution of complementary punishments, out of which the duration of the already executed punishment shall be deducted. If the repeal of the suspension of punishment execution under supervision and the replacement of a fine with imprisonment shall be decided, for any other reasons than for committing a new crime, the part of the complementary punishment regarding the forbiddance of rights, which was not executed at the recall or replacement date, shall be executed after the execution of the punishment of imprisonment.

The third starting moment of the complementary punishment is after the execution of the punishment of imprisonment, after absolute pardon or pardon of the rest of the punishment, after completing the punishment execution limitation term or after the expiry of the probation supervision term. In this case, the execution starts after the primary punishment's execution or after the primary punishment is considered to have been executed.

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[2] G. Antoniu and collaborators – *Explicații preliminare ale noului Cod penal* (Preliminary explanations of the new Criminal Code)– vol. II, "Universul Juridic" Publisher, Bucharest, 2011, pg. 64, Commentary Senior Lecturer PhD. Cristian Mitrache.

For the first time the legal text expressly provides that, under the complementary punishments' execution section, the fact that its execution also starts after the expiry of the probation supervision term, which was only implicit until now.

Such starting moment of the complementary punishments' execution is a natural moment, considering the nature and content of the complementary punishments. In the situation in which the complementary punishments would be executed during the execution of the primary punishment applied, than it would substitute itself with the accessory punishments, which have the same content, respectively the suspension of certain rights, but such punishments are executed at the moment of the final judgment of conviction and until the primary punishment regarding the depriving of liberty has been executed or considered to be executed [art. 65 paragraph (3) new Criminal Code].

Pursuant to art. 160 from the new Criminal Code, the pardon results in the total or partial elimination of the punishment execution or in its commutation to an easier one, but pardon does not affect the complementary punishments and the educative, non depriving of liberty measures, unless otherwise provided in the act of grace. For this purpose, Law no. 546/2002[3] on pardon and on the pardon grant procedure provides, under art. 5, that in the case of a legal entity, both the primary punishment and the complementary punishments provided in art.139 and 140 from the new Criminal Code can be granted pardon. The execution of complementary punishments shall be made after the absolute pardon of the punishment or in case of partial pardon, after the execution of the rest of the punishment to be executed.

The execution of the complementary punishment shall start after the completion of the limitation term for punishment execution, as during the entire limitation term for the punishment's execution the convict is submitted to the execution of accessory punishments. The execution of complementary punishments until the completion of the limitation term for the punishment execution would imply the execution, at the same time, of punishments having the same scope, namely the suspension of certain rights, their overlap leading to the impossibility of a parallel enforcement.

The execution of complementary punishments after the expiry of the probation supervision term is natural, both the effects of the primary punishment and the effects of the accessory punishment operating until that term. The probation supervision term is regulated by art. 106 from the new Criminal Code, which stipulated that, in the event that the convict did not commit a new crime until the expiry of the supervision term, if the probation annulment was not decided and no annulment cause was discovered, the punishment shall be considered to be executed.

In what concerns the complementary punishment's enforcement, together with the primary or accessory punishment, the law provides certain requirements that need to be fulfilled.

For this purpose, when there are extenuating circumstances, the complementary punishment, privative of rights, provided by law for the committed crime may be eliminated.

In case of a second offense, in case of multiple offenses and in other situations in which resultant punishments are applied, the enforcement of complementary punishments is performed based on the offenses constituting the plurality and the punishments settled for each offense. In case of a conviction for multiple offenses, the enforcement of the complementary punishment regarding the forbiddance of rights is performed, when applicable, for each offense, subsequently accompanying each primary punishment settled by the court[4]. In jurisprudence, it was shown[5] that the proceeding of attaching the complementary punishment regarding the forbiddance of rights only to the resulted punishments, which are a result of conflating the settled individual punishments,

[3] Published in the Official Gazette of Romania (Monitorul Oficial al României), Part I, no. 755 from October 16, 2002.

[4] M. A. Hotca – *Drept penal. Partea generală* (Criminal Law. General part) –C.H. Beck Publisher, Bucharest, 2007, pg. 581.

[5] Bucharest Court, 1st Criminal Section, Criminal sentence no. 410/1991, site Indaco lege.

pursuant to art. 33 and 34 letter a) from the Criminal Code, is wrong and the punishments need to be settled for each offense in part.

Art. 45 from the new Criminal Code stipulates that, if for one of the crimes committed there was also settled a complementary punishment, such punishment shall be enforceable together with the primary punishment. When several complementary punishments of different nature or even of the same nature, but with different content have been settled, such punishments shall be enforceable together with the primary punishment. If more complementary punishments of the same nature, with the same content have been settled:

a) in case of multiple offenses or in case of intermediate plurality, the hardest one shall be enforced;

b) in case of a second offense, the unexecuted part from the previous complementary punishment shall be added to the punishment settled for the new offense.

In case of successive convictions for multiple offenses, the part of the complementary punishment that was executed until the date of conflating the primary punishments shall be deducted from the term of the complementary punishment applied in addition to the resulted punishment.

The sanctioning treatment of multiple offenses shall be enforceable only when at least one of the offenses in the plurality structure was committed under the new law, even if for the other offenses the punishment has been settled according to the previous, more favorable law.

Regarding certain factors (foreign citizens, persons without children, persons not holding weaponry, etc.), the enforcement of such complementary punishment is useless, as they do not own the exercise of such rights, therefore they cannot execute the complementary punishment, and the enforced punishment does not fulfill its preventive and sanctioning role. We can offer as an example the case of persons without children, whose parental rights were suspended.

The conditioned suspension of the primary punishment does not wave the court's obligation to enforce the complementary punishment regarding the forbiddance of rights whenever provided by law for the committed crime.

In the event that the conviction of the defendant to life imprisonment was decided, the enforcement of the complementary punishment regarding the forbiddance of rights is mandatory if provided by law, as in some cases, the person convicted to such punishment may be set on probation or the punishment of life imprisonment may be replaced with incarceration[6].

Moreover, in case of amnesty after conviction, the criminal responsibility being waved, in consequence it will also waive the effects of the conviction. We consider this to be the only case in which the time of the complementary punishment regarding the suspension of certain rights ceases earlier than the time settled by law, namely for a period between one and 5 years.

As a transition situation, we consider that in case of succession of criminal laws, which interfered until the final sentence, the accessory and complementary punishments shall be applied according to the law that was identified as favorable in relation to the crime committed.

When the law provides the **forbiddance of the right of occupying a public position**, the court is obliged to pronounce the forbiddance of rights provided in paragraph (1) letters a) and b), namely the right of being chosen as public authority or in any other public offices and the right to occupy a position involving the exercise of the state authority. The forbiddance of the latter rights shall be cumulatively disposed.

The complementary punishment regarding the interdiction of the right of a foreign person to stay on the Romanian territory shall not be decided when there are grounded reasons to

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[6] Luca A. – *Aplicarea pedepsei complimentare a interzicerii unor drepturi atunci când s-a aplicat pedeapsa principală a detenţiunii pe viaţă (Enforcement of the complementary punishment regarding the forbiddance of rights when the primary punishment of life imprisonment was enforced)*, Revista Pro-Lege nr. 3/1998, pag. 177; Lupaşcu R. – *Aplicarea pedepsei complimentare a interzicerii unor drepturi atunci când s-a aplicat pedeapsa principală a detenţiunii pe viaţă*, Revista Pro-Lege nr. 3/1998, pag. 179.

believe that the life of the expulsed person is in jeopardy or that such person shall be submitted to torture or to other inhumane or degrading treatments in the state where it is to be expulsed.

The complementary punishment's enforcement procedure regarding the interdiction of the right of a foreigner to stay on the Romanian territory is regulated under art. 563 from the new Criminal Procedure Act.

In the context in which, through the sentence of imprisonment, the complementary punishment regarding the interdiction of the right of a foreigner to stay on the Romanian territory is also applied, in the writ of execution of the punishment of imprisonment it shall be mentioned that on discharge, the convict shall be turned in to the police authorities, which shall proceed to the convict's removal from the Romanian territory.

The Government Emergency Ordinance no. 102/2005[7] regarding the free movement of citizens from the member states of the European Union and from the European Economic Area, on the Romanian territory provides, under art. 30, that in case of family members who are not citizens of the European Union or of a state in the European Economic Area, against whom an accessory punishment has been decided, respectively a complementary punishment regarding the interdiction of the right of a foreigner to stay on the Romanian territory pursuant to art. 65 paragraph (2) letter c), respectively art. 66 paragraph (1) letter c) from the new Criminal Code, the provisions of the Government Emergency Ordinance no. 194/2002[8], as republished, with its subsequent additions and amendments, regarding the taking into public custody and, as the case may be, the tolerance of remaining on the Romanian territory, shall be enforced accordingly.

If the complementary punishment does not join the punishment of imprisonment, the communication thereof shall be made to the police authority, immediately after the judgment was declared final.

Regarding the enforcement of the punishment of interdiction of a foreigner to stay on the Romanian territory, the police authority may enter the domicile or residence of a person without their consent, as well as the headquarters of a legal entity without the consent of its legal representative.

If the person against which the punishment regarding the interdiction of the right to stay on the Romanian territory is not found, the police authority shall record such fact in a protocol and it shall take measures for the prosecution, as well as for detaining orders at the border crossing points. A copy of the protocol shall be sent to the enforcement court.

In the event that probation was decided, the interdiction of the right of a foreigner to stay on the Romanian territory shall be executed on discharge. Therefore, art. 68 paragraph (2) from the new Criminal Code provides an exception regarding the starting moment of the complementary punishment's enforcement in the event that probation was decided. For this purpose, during probation, the convict shall be in the process of executing the accessory punishment having as scope the forbiddance of certain rights, except for the suspension of the right to stay on the Romanian territory, and the convict shall also be in the process of executing the complementary punishment having as scope the interdiction of the right of a foreigner to stay on the Romanian territory[9].

The interdiction of the right of a foreigner to stay on the Romanian territory shall not apply in case the suspension of the punishment execution under supervision was decided.

Also, in case of life imprisonment, punishment for which the convict can be set on probation, the execution of complementary punishments won't be necessary, as the person shall be expulsed from the country immediately.

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[7] Published in the Official Gazette of Romania (Monitorul Oficial al României), Part I, no. 646 as of July 21, 2005 with its additions and amendments, through Law no. 260/2005, with its subsequent additions and amendments.

[8] Republished in the Official Gazette, Part I no. 421 as of 05/06/2008 and updated on 31/07/2011.

[9] G. Antoniu and collaborators – *Explicații preliminare ale noului Cod penal* (Preliminary explanations of the new Criminal Code) – vol. II, Ed. Universul Juridic, Bucharest, 2011, pg. 66, Comment Senior Lecturer PhD. Cristian Mitrache.

For an accurate correlation of the Criminal Code provisions to those of the extra-criminal laws containing criminal provisions, the Government's Emergency Ordinance no. 194/2002[10] regarding the foreign citizens' status in Romania, as subsequently supplemented, gets modified by the insertion of a new article, 143^1, which stipulates that 'In the content of the present ordinance, the reference to the expulsion safety measure is deemed to be made for the accessory and complementary punishment, applied in pursuance of the provisions of art. 65, par. (2), section c), or of art. 66, par. (1), section c), of the Criminal Code.'.

Pursuant to art. 562 of the new Criminal Procedure Code, the punishment of forbidding certain rights to be exercised is applied by the enforcing court's serving a copy of the ruling enacting stipulations to the Local Council in whose area is located the convict's residence and to the organism that monitors the exercise of those rights.

Upon receiving the copy of the enacting stipulations from the decision by which the complementary punishment of forbidding one of the rights foreseen by art. 66, sections a), d) and e), of the new Criminal Code will have been enforced, the Local Council shall notify it to the competent services, for recording purposes. Any organism invited to perform an action that involves the respective person's exercising one of the rights foreseen at art. 66 of the new Criminal Code shall ask that person to issue an affidavit according to which he/she has not been inferred any conviction by which the exercise of that right was restricted. Furthermore, if deemed necessary, the competent organism shall request information from the institution responsible for keeping the records of the convicted persons [11].

For the execution of the complementary punishment, the conviction decision needs to be final. The convict shall accomplish the obligations imposed on for doing or for refraining from doing something. The execution of the complementary punishment supposes a duration of the punishment execution, of the obligation set up for the convict, which means that the punishment execution begins at a certain moment and ends at another certain moment [12].

The complementary punishment is enforced according to a certain procedure, by the organisms specifically assigned by the law, namely by the enforcing organisms, and the administrative organisms shall monitor their enforcement.

In this context, in the event that the convict was forbidden the exercise of the rights stipulated by art. 66, sections a), b) and c), of the new Criminal Code, the decision excerpt shall be submitted to the Local Council in whose area is located the convict's residence or to the People Records Community Public Department, so that these institutions could make sure that the electoral lists do not contain candidates that have been forbidden those rights or that those persons are not included on the specially drafted lists for the people who will have been forbidden the exercise of those rights. In addition, a copy of the final conviction decision excerpt shall also be notified to the Criminal Records Department, for its being able to make the necessary specifications, so that, in case that the convict wishes to enjoy the right of being elected to be part of the public authorities or in any other public positions or to hold offices that involve the exercise of the State authority, the conviction could appear in his/her criminal record certificate upon the candidature submission.

In the event that the convict was forbidden the exercise of the right foreseen by art. 66, section g), of the new Criminal Code, namely the right to hold offices, to exercise the profession or the trade or to carry out the activity that he/she has used for perpetrating the felony, the decision excerpt shall be submitted both to the Local Council in whose area is located the convict's residence and to the institution that monitors the profession, trade or activity exercise. For instance, in case that the

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[10] As republished in Romania's Official Journal – Part I, no. 421 from June 5th, 2008.

[11] Pascu I. – *Criminal Law. General Part* – 2nd edition – Hamangiu publishing house, Bucharest, 2009, page 444.

[12] N. Volonciu, R. Moroşanu – *Commented Criminal Procedure Code* – Hamangiu publishing house, Bucharest, p. 44.

prohibition of this right was decided for a solicitor, the decision excerpt shall be notified to the bar whose list contains the name of that solicitor, with an aim to strike it off from the solicitor profession. Pursuant to art. 58, section d), of the Solicitor Profession Status, the solicitor status ceases where the solicitor was finally convicted for a deed foreseen by the criminal law and that renders him/her unworthy to be a solicitor, in view of the law.

In case of forbidding the convicted person to exercise the parental rights and the right to be a tutor or a trustee, the decision excerpt shall be submitted to the Tutorial Authority department within the town hall or city hall in whose area is located the convict's residence.

The obligation execution, if performed according to the law, shall void the obligation set up by the sentencing decision.

We think that the provisions of art. 562 of the new Criminal Procedure Code have been righteously modified by the Law concerning the enforcement of the Criminal Procedure Code, from the viewpoint of the stipulation according to which thepunishment of forbidding the exercise of certain rights shall be applied by the enforcing court's appointed judge's serving a copy of the ruling enacting stipulations, subject to the rights whose exercise will have been forbidden, **to the public law or private law legal entity authorised to monitor the exercise of that respective right.**

In this way, the legislative body of the new Criminal Procedure Code included in the 'public law or private law legal entity authorised to monitor the exercise of that respective right' expression the totality of the public law or private law legal entities compelled to monitor the exercise of the right forbidden by the final conviction decision.

The Civil Code stipulates at art. 188 that the legal entities include the entities foreseen by the law, as well as any other legally incorporated organisations that, even though not declared as legal entities by the law, are independently organised and have their own patrimonial assets meant to reach a certain licit and moral goal, pursuant to the general interest.

The public law legal entities are incorporated by the law. As an exception thereof, public law legal entities may also be incorporated by virtue of documents issued by the central or local public administration or by some other means foreseen by the law.

The following can be included in this category : the Local Council, the People Records Community Public Department, the Criminal Records Department, the Tutorial Authority etc.

By 'private law legal entities', the new Civil Code defines at art. 190 any private law legal entities that can be freely incorporated in one of the forms foreseen by the law. This category may include any private law entity incorporated under the law and authorised to monitor the execution of a court order.

2. The manner of executing the complementary punishment of the military rank loss

Military rank loss is the complementary punishment consisting in the loss of the military rank and of the right to wear the uniform by the active military, in reserve or withdrawn, convicted for having perpetrated a felony punished by a freedom-depriving punishment, as per the legal provisions.

This punishment has got a restricted application from the standpoint of the perpetrator, the law naturally limiting the enforcement of this punishment only in case of military and reservists.

The enforcement of the military rank loss complementary punishment takes place in case of perpetrating highly serious criminal deeds.

The military rank loss punishment is a right-depriving one, which supposes the loss of the right to the rank and to the uniform, as compared to the complementary punishment of prohibiting certain rights, which is a right-restrictive punishment consisting in a suspension, in a restriction of exercising certain rights for a given period of time (from 1 to 5 years), but not in their loss. In this regard, the convict is withheld from enjoying certain rights expressly foreseen by the law.

From the point of view of its mechanism of execution], the military rank loss punishment has got a negative content, the execution of this punishment being materialised in a passive attitude imposed on to the convict by the law, in the sense that this one is not forced to do something ; on the contrary, he is withheld from certain rights [13].

Aiming at depriving from certain specific civic rights, this punishment may only be enforced to the persons that are exercising these rights upon conviction [14], namely to hired active military or to reservists.

The military rank loss punishment, even though enforceable from the moment when the sentencing decision remains final, has got an absolutely depriving character, as its duration is undetermined. The Law 80/1995[15] regarding the military status, stipulates at art. 71-72 the possibility for the military rank loss complementary punishment to be annulled by another court order that has ruled acquittal or by which this punishment is no longer enforceable ; in this case there is the possibility of regaining the rank and of re-booking the military in the records. Hence we can notice that the effect of the military rank loss and of the loss of the right to wear the uniform is applied all throughout one's life.

What is more, the military who is active, in reserve or withdrawn could not lose his military rank and the right to wear the uniform all throughout his life, as an effect of the military rank loss complementary punishment enforcement. Thus, in case of pardon, reprieve or rehabilitation after conviction, the convict may be relieved the restrictions entailed from the military rank loss enforcement. Pardon, which brings forth the relief of the criminal responsibility, will also relieve the other consequences of the conviction, including those of the military rank loss complementary punishment. In principle, reprieve does not have any effects on the complementary penalties, however the reprieve document may foresee the elimination of the complementary penalties effects [16]. Pursuant to art. 160, par. (2), of the new Criminal Code, reprieve does not have any effects on the complementary penalties, save where decided so in the reprieve document.

Given that the Court cannot separate the content of the punishment upon its enforcement, the military rank loss is a punishment in character and has an irreductible content, the rights foreseen in the legal text constituting an indivisible complex of rights.

Nonetheless we think that the perpetual effect of the military rank loss can only be kept in mind only as far as the loss of the right to military pensions is concerned, which lasts all throughout one's life unless this punishment gets rescinded by a final irrevocable court order.

In pursuance of art. 69, par. (2), of the new Criminal Code, military rank loss is mandatorily applied when this complementary punishment is enforced alongside the main punishment with imprisonment longer than 10 years or life detention.

The elective enforcement - art. 69, par. (3), of the new Criminal Code - can be decided by the Court in case of the military convicts that have wilfully perpetrated the felony, the main punishment being at least 5 years and 10 years at the most. The elective character of this enforcement manner is entailed *ex lege*, the text stipulating that the military rank loss 'may be applied'.

Please note that unlike the mandatory military rank loss, which is only conditioned by the quality of the felony subject and by the amount or the nature of the main punishment set up, the elective rank loss is conditioned by the subject's quality, by the nature of the felony and by the amount of the freedom-depriving main punishment established by the judge. In this regard, the

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[13] Dongoroz V. *et collab. – Theoretical Explanations of the Romanian Criminal Code. General Part* - book II, 2nd edition – Romanian Academy publishing house, Bucharest, 2003.

[14] Bucharest Court of Appeals – The criminal decision no. 55/2000 in T. Toader's *Criminal Law. General Part* – page 116.

[15] Published in the Official Journal – Part I no. 155 dated 20.07.1995.

[16] G. Antoniu *et collab. – Preliminary Explanations of the New Criminal Code* – book II – The Legal Universe publishing house, Bucharest, 2011, page 70 – Comments : Cristian Mitrache, Univ. Reader PhD .

following imperative conditions should be met : the enforcement of a freedom-depriving punishment set up by the Court and its wilful perpetration.

The military rank loss complementary punishment is applied irrespective of the existence or non-existence of a connection between the felony and the military status and irrespective of whe-ther the perpetrator had or not the status of military on the felony perpetration date, the important thing being that the subject should have the status of a military when the conviction verdict is ruled. Unfortunately, in the case law there have been many contrary solutions where this punishment was automatically enforced in addition to the punishment of imprisonment longer than 10 years, irrespective whether the defendant has had the status of active military or of reservist or not [17].

Being conditioned not by the main punishment foreseen by the law, but by the main punishment established by the Court, military rank loss has not been specified in the special incrimination norms, as the interdiction of certain rights was.

The military rank loss complementary punishment may be ruled both by the military Courts and by the civil ones (when judging offences perpetrated by a convict prior to this one's having acquired the status of military).

Being conditioned by the amount of the main punishment to which is added, the legislative body did not also foresee military rank loss on account of the various offences whose perpetration brings in the enforcement of this punishment.

It should be noted that both the military rank loss and the prohibition of certain rights exercise complete the main punishment when the Court assesses the necessity of unifying the direct repression, which functions cumulatively with the main punishment, several complementary penalties being sometimes enforced for the same felony (for instance, in case of a real group of offences, the complementary penalties having a different nature or even the same nature but a different content, are applied alongside the freedom-depriving punishment that the convict is to execute). Finally, the complementary penalties, being criminal sanctions like the main penalties, perform the function of general prevention and of special prevention – the latter one to a larger extent – the convict that executes the complementary punishment being put in the position of no longer perpetrating any other criminal offence.

Unlike the complementary punishment of prohibiting the exercise of certain rights, the military rank loss punishment does not have a specific duration, as its execution takes place forthwith and immediately after the sentencing decision becomes final, the loss of the military rank and of the right to wear the uniform operating right from the moment when the sentencing decision acquires the power of a judged issue, which is a situation that appears to be an exception from the rule, according to which the complementary penalties come into action after the execution of the main freedom-depriving punishment to which it is added comes to an end.

Pursuant to art. 564 of the new Criminal Procedure Code, the military rank loss punishment is inferred by the enforcing Court's serving a copy of the ruling to the commander of the military facility to which the convicted person had belonged or to the commander of the military centre in whose area is located the convict's residence, with an aim to strike him off from the military records.

The law for enforcing the new Criminal Procedure Code modifies the provisions of art. 564 thereof, stipulating that the military rank loss punishment is inferred by the enforcing Court's serving a copy of the ruling enacting stipulations to the commander of the military facility in whose records the convicted person is included and also to the County or Regional Military Centre from the convict's residence.

[17] T.B. – Criminal Ruling no. 114/2009, unpublished ; Ploieşti Court of Appeals – Criminal decision no. 185/A/1998, commented upon by Crişu S. and Crişu E. in *The Criminal Code Annotated by Judicial Practice - 1989-1999* - Argessis Print publishing house, 1999, page 204.

In this context, the new regulation brings in little name modifications, in the sense that the enforcing Court is not to send a copy of the ruling to the commander 'of the military facility to which the convicted person had belonged', but to the commander 'of the military facility in whose records the convicted person is included'.

Out opinion is that this rephrasing is more appropriate, seeing that the military rank loss represents a complementary punishment, applied alongside the main punishment, and from the procedural viewpoint, upon the execution of the ruling provisions, the convict is already withdrawn his military rank.

In this regard, the enforcing Court should serve a copy of the ruling to the commander of the military facility in whose records the convicted person is included. The procedure is thus simplified, because the commander of the military facility to which the convict had belonged had the obligation, in his turn, of notifying the ruling enacting stipulations to the military facility in whose records the former military was included.

3. The manner of executing the complementary punishment of publishing the sentencing decision

The complementary punishment of publishing the sentencing decision is applicable both to willful offences and to faulty offences and it regards all the natural entities that are inferred their criminal responsibility, as there are no categories of relieved persons. For the Court, the sanction is elective in character, as it is to assess, depending on the case, whether its enforcement is necessary, subject to the offence nature and seriousness, to the circumstances in which it will have been perpetrated and to the potential impact of the negative publicity arisen in this way [18].

The Court may decide the publication in an excerpt, in a form where the content should be explicit and comprehensible for the public, with a presentation and impact form that should be as visible as possible (on the front page, with a certain printing format, with a certain letter size or in a frame) within the page of an either local or national daily newspaper. As concerns the displaying form, the legislative body obviously refers to how the natural entity is compelled to provide the displaying of the ruling enacting stipulations, namely the advertisement format, as its sizes should be as such as to enable the advertisement noticing and reading by the people that read the local or national daily newspaper. In order to reach the sanction goal, the publication should contain a short presentation of the actual circumstances, as the same had been taken note of by the Court, as well as the elements of the ruling enacting stipulations.

Unlike the complementary punishment of posting or publishing the sentencing decision in case of the legal entities, which takes place within a time frame ranged between one month and 3 months, in case of a natural entity it shall be published once. In this way, the legislative body characterises this complementary punishment as an absolutely defined punishment, even though it appears to be an undefined one.

The publication of the final sentencing decision shall be made on the convict's expenses, by one appearance in a local or national daily newspaper.

The publication of the sentencing ruling should not prejudice the victim's subjective rights, therefore the identity of the victim or of other persons in the file may not be revealed, save where there is their own consent or their legal representative's consent thereto. The law has also regulated the situation where there appear several persons in the case circumstances, as they are also protected from the standpoint of their right to private life and their identity is not divulged. The law has not foreseen a term for enforcing the complementary punishment of publishing the final sentencing

[18] Antoniu G. *et collab.*- *The New Criminal Code* - book III, C.H.Beck publishing house, 2008, page 189.

ruling, which means that its execution may take place right after the sentencing ruling becomes final[19].

As this complementary punishment for natural entities is a new one, the Courts' practice is to develop the situations where such a punishment may be inferred besides the main punishment. The efficiency of such complementary penalties for the legal entities represented by natural entities has led to the conclusion of enforcing the measure directly in charge of the natural entities.

As regards the execution of the complementary punishment of publishing the sentencing decision, art. 565 of the new Criminal Procedure Code stipulates that this can be executed by sending the excerpt, in the form set up by the Court, to a local newspaper belonging to the area of the Court that has ruled the sentencing decision or to a national newspaper, for publishing purposes on the expense of the convicted person.

Yet we think that the moment of this complementary punishment execution commencement coincides to the moment of sending the final sentencing decision excerpt to the local newspaper that is spread in the area of the Court that has ruled the sentencing decision or to a national newspaper, and that the actual execution takes place right when it is published.

Given that the provisions of the new Criminal Code stipulate the possibility of applying the complementary penalties both when the main punishment is imprisonment and when the main punishment is a fine, we think that the insertion of the stipulations regarding the interdiction of exceeding, by the publishing expenses, of the amount of the fine applied to the natural person for the act that he/she has committed (the source of inspiration could be the provisions of art. 131-35 of the French Criminal Code) is necessary.

In case of lacking of executing the punishment in *mala fides*, the judge assigned to enforce the same may ascertain that the constitutive elements of the offence related to the criminal sanctions foreseen and punished by art. 288, par. (1), of the new Criminal Code, which is an offence punished by 3 months to 2 years of imprisonment or by a fine, are present.

If upon enforcing the ruling execution or during the execution there appear something unclear or something hindering the execution, the judged appointed to enforce the execution may signal out the execution Court.

Where the Court rules the prohibition of one of the rights foreseen at par. (1), section n) - the right of communicating with the victim or with family members thereof, with the persons with whom he/she will have committed the offence or with some other people established by the Court, or of getting close to them – and section o) – the right of getting close to the dwelling, the workplace, the school or to other places where the victim carries out social activities, under the terms set up by the Court – this one shall actually particularise the content of that punishment by taking into account the case circumstances.

Seeing that the complementary punishment of publishing the sentencing decision is a newly inserted provision, we think that this should not applied in case of the criminal offences committed prior to its inuring.

Conclusions

The new Criminal Code aims at providing the judge with a wide range of measures that could enable optimal judicial particularisations, thanks to their flexibility and diversity. In this regard, the incidence scope of the complementary penalties was significantly extended, the number of rights contained by the punishment was enlarged and a new kind of punishment was introduced, namely the publication of the final sentencing decision.

As this complementary punishment for natural entities is a new one, the Courts' practice is to develop the situations where such a punishment may be inferred besides the main punishment. The

[19] G. Antoniu *et collab. – Preliminary Explanations of the New Criminal Code* – book II – The Legal Universe publishing house, Bucharest, 2011, page 70 – Comments : Cristian Mitrache, Univ. Reader PhD.

efficiency of such complementary penalties for the legal entities represented by natural entities has led to the conclusion of enforcing the measure directly in charge of the natural entities.

We think that the provisions set up by the new Criminal Code in terms of complementary penalties are meant to provide an optimal punishment particularisation, so as to avoid, to the maximum extent possible, the non-unitary solutions from the case law.

This field of research, even though debated upon by countless doctrine experts, will keep on representing a field of analysis, seeing the modifications that are to be introduced by the new incident criminal legislation.

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