

THE COMPLEMENTARY PENALTY OF PUBLISHING THE CONVICTION DECISION IN TERMS OF THE NEW CRIMINAL CODE

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Abstract

We think that the approach of such subject presents without a doubt a scientific interest, in the context of the legal amendments brought by the new criminal law. In the form of a monographic study, the article is dedicated to analysing the complementary penalty of publishing the final conviction decision, in case of the natural person as well as of the legal one, by reference to the provisions of the Criminal Code, but also to the incidental laws. As we are talking about the introduction of new complementary punishments, which haven't been previously mentioned in the criminal doctrine, but also about amendments in relation to the content, the application and performance of the complementary punishments, we tried to overcome this void by presenting some personal idea in relation to the new regulations.

Keywords: *complementary penalty, penalty, decision of conviction, the new criminal code.*

1. The complementary penalty of publishing the decision of conviction in case of natural persons

For the first time in our criminal law there is the possibility to publish the final decision of conviction in case of natural persons, without having a correspondent in any of the previous regulations. This complementary penalty, in the previous Criminal Code was provided in a specific form, only in case of natural persons.

According to the provisions of art. 70 Criminal Code the publication of the final decision of conviction can be decided when considering the nature and seriousness of the crime, the circumstances of the trial and the person of the convict, the court thinks that the publication shall contribute to preventing the performance of other such crimes. The publication of the decision of conviction is published in excerpt, in the form established by the court, in a local or national newspaper, only one time. The publication of the final decision of conviction is made upon expense of the convicted person, without revealing the identity of other people.

A similar regulation is subject to art. 36 of the Italian Criminal Code and art. 131-35 of the French Criminal Code.

The criminal code in 1936¹ provided similar provisions in Section II - Complementary penalties, art. 25 paragraph 4 „publishing and displaying the conviction decisions, according to the law”, and in Chapter VI - Publishing and displaying the decision, art. 61 regulated the following: „The final decisions issuing any of the criminal penalties provided by art. 22 are published by care of the Prosecutor's Office, in

excerpt, in the Official Gazette and is displayed for at least one month on the door of the convict, at the city hall of the commune where the crime was committed and at the one where the victim has his/her residence. In correctional terms, the court can order publishing the decision of conviction, only upon request of the harmed party and only when the publication would be a manner of moral repair. This provision is applied to simple imprisonment”.

The aim of establishing this complementary penalty was to increase the efficiency of the message in the justice action, but also ensuring a moral repair for the harmed person². By publishing the content of the decision of conviction, even the court of law contributes, by its authority, to repairing the harm produced to the victim.

Also, the Criminal Code wants to ensure to the judge a wide range of measures which, through flexibility and diversity, allow a good judicial individualization. In relation to this, the incidence range of the complementary penalties, of the number of rights included in the complementary penalty of prohibiting certain rights has been significantly extended and this new type of applicable complementary penalty was introduced - publishing the final decision of conviction³.

The publishing of the decision is a complementary penalty with a special moral character, with a strong intimidating effect if the offender is notorious in that locality, the criminal offences have produced a major impact in terms of interest of the public opinion, or in case the nature and seriousness of the crime have aroused a vivid interest for the community. In such situations, the publication of the decision has an increased effect in relation to the convict, but also by power of the example of the case,

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¹ Published in the Official Gazette, Part I no. 65 of 18/03/1936.

² M. A. Hotca, *Noul Cod Penal și Codul penal anterior. Aspecte diferențiale și situații tranzitorii*, Ed. Hamangiu, Bucharest, 2009, p. 74.

³ Presentation of the reasons for the new Criminal Code, published on the website of the Chamber of Deputies– <http://www.cdep.ro/proiect/2009/300/00/4/em304.pdf>.

which can contribute to the prevention of other such offences⁴. For this, the duration of the impact for publishing the decision is relative, lasting in time in relation to the interest of the public opinion towards the crime produced, its consequences or the offender. On the other side, the negative publication of the offences committed by the offender, on his/her expense, warns the public in order to prevent committing similar types of crimes⁵.

The new Criminal Code provides this new complementary penalty so that the prevention of the offences can be achieved also through knowledge by publishing, with the power of the mass-media means to penetrate in the conscience of citizens.

Another reason would be the moral repair which can be granted to the harmed person, which can obtain full satisfaction, especially if the offence was performed using also the means provided by the mass-media. In case the advertising of the case affects the victim of the offence, the publication of the decision is achieved with the necessary anonymity for the victim not to be identified. The same thing is achieved also in case of the legal person⁶.

The complementary penalty of publishing the conviction decision is a disreputable penalty, which submits the convicted person to public odium. Such sanction can have a strong deterrent effect, being a true defamation performed on own expense, meant to warn the public opinion about the offence of the convict.

In relation to this, the complementary penalty of publishing the decision of conviction is a penalty with positive effects in terms of penalty purpose, affecting the image of the convicted person, as it can have patrimonial consequences in case the convict loses his/her credibility for performing certain positions or services. It is a penalty performed and a string general prevention, considering it prevents committing new such offences.

As the law does not provide any condition related to the main penalty next to which the complementary penalty of final publication of the conviction decision can be applied, it results that this complementary penalty can be applied independently of the type and seriousness of the penalty issued. So, the publication of the final decision of conviction can be decided in case of conviction to life imprisonment, in case of conviction to imprisonment or in case of fines. Also, in the absence of a contrary provision, this complementary penalty can be applied also in case the execution under supervision was decided in relation to the main penalty⁷.

Not being conditioned by the application of a certain main penalty or by its duration, in principle the publication of the final decision of conviction can be

decided provided there is a conviction, which distinguishes it from the complementary penalty of displaying or publishing the conviction decision, specific for legal persons, whose application is conditioned by applying the main penalty of the fine⁸.

The complementary penalty of publishing the decision of conviction is applicable for both intentional offences and offences by fault and is related to all natural persons which are criminally liable, and there are no categories subject to exceptions. The sanction is optional for the court, and according to the case it shall be assessed if it is necessary to apply it, according to the nature, seriousness of the offence, the circumstances in which it was committed and the impact of the negative publicity performed in this manner⁹. So it results that unlike the other two complementary penalties whose application is optional as well as compulsory, the application of the complementary penalty consisting in the final publication of the decision of conviction is only optional¹⁰.

The court of law can decide the publication in excerpt, in a form in which the content is explicit and understandable to the public opinion, in the exposure and impact form as visible as possible on the first page, with a certain printing format, with a certain size of the letter or of the border, on the pages of a local or national newspaper. In relation to the form of display, it is obvious that the lawmaker refers to the manner in which the natural person has the obligation to ensure the display of the decision's operative part, respectively to the format of the ad, the sizes must be so that they allow the people which read the local or national newspaper to observe and read the ad. In order to reach the purpose of sanctioning, the publication must also include a short presentation of the de facto situation, as noted by the court of law, as well as the elements of the decision's operative part.

In relation to the form of display, it is obvious that the lawmaker refers to the manner in which the natural person has the obligation to ensure the display of the decision's operative part, respectively to the format of the ad, the sizes must be so that they allow the people which read the local or national newspaper to observe and read the ad. In order to reach the purpose of sanctioning, the publication must also include a short presentation of the de facto situation, as noted by the court of law, as well as the elements of the decision's operative part.

Unlike the complementary penalty of displaying or publishing the decision of conviction in case of legal persons, which is performed for a period between one month and 3 months, in case of the natural person it shall be published only once. In this manner, the

⁴ I. Chiş comment in I. Pascu şi colab., *Noul Cod Penal comentat*, Part generală, vol. I, Ed. Universul Juridic, Bucharest, 2012, p. 456.

⁵ M. Basarab şi colab., *Codul penal comentat*, Part generală, vol. I, Editura Hamangiu, Bucharest, 2007, p. 400.

⁶ I. Chiş comment in I. Pascu şi colab., *Noul Cod Penal comentat*, Part generală, vol. I, Ed. Universul Juridic, Bucharest, 2012, p. 456.

⁷ C. Mitrache comment in G. Antoniu şi colab., *Explicații preliminare ale noului Cod Penal*, vol. II, Ed. Universul Juridic, Bucharest, 2011, p. 69.

⁸ V. Paşca, *Curs de drept penal. Part generală*, ed. a II-a, Ed. Universul Juridic, Bucharest, 2012, p. 441.

⁹ G. Antoniu şi colab., *Noul Cod Penal*, vol. II, Ed. C. H. Beck, 2008, pag 189.

¹⁰ G. Antoniu şi colab., *Explicații preliminare ale noului Cod Penal*, vol. II, Ed. Universul Juridic, Bucharest, 2011, p. 70.

lawmaker describes this complementary penalty as an absolutely determined penalty, although apparently it could seem an undetermined penalty.

The publication of the final decision of conviction is performed on the expense of the convict, with only one appearance in a local or national newspaper. In this manner, the lawmaker describes this complementary penalty as an absolutely determined penalty, although apparently it could seem an undetermined penalty.

Although it has a temporary determined nature (publishing it only one time), its effect in time is relative, being determined by a series of factors such as the spreading area and the circulation of the publication, the interest of the public opinion towards the cause, factors which the court should consider when it decides such a penalty, in order for its effect to be according to the seriousness of the offence¹¹.

The law does not provide any term for the application of the complementary penalty of publishing the final decision of conviction, which means that its performance can be performed immediately after the decision of conviction remains final.

The publication of the decision of conviction must not affect the subjective rights of the victim, reason for which with the publication of the decision the identity of the victim or of other people in the file, as well as the names of the judges in the panel, of the lawyers, of the witnesses etc. cannot be revealed (in order to avoid possible revenges). The law also regulated the case according to which in the circumstances of the trial there are more people, which are also protected in relation to their right to a private life, their identity not being revealed. The complementary penalty must target exclusively the person in relation to which this penalty was decided, the identity of the victim or of other participants cannot be revealed, if in relation to this it was not decided to apply the complementary penalty of publishing the final decision of conviction.

As this complementary penalty for the natural persons is recently introduced, the practice of the courts of law shall develop the situations in which it can be applied. The efficiency of such complementary penalties for legal persons, represented by natural persons, lead to the conclusion of applying the measure directly in relation to natural persons¹².

Considering that the provisions of the Criminal Code provide the possibility to apply the complementary penalties in case the main punishment is imprisonment, as well as in case the main penalty is the fine, **de lege ferenda ("with a view to future law") we propose introducing the regulations regarding the interdiction of exceeding, through the publication expenses, the amount of the fine applied to the natural person through the offence**

committed (the inspiration source might be the provisions of art. 131-35 French Criminal Code).

In relation to the enforcement of the complementary punishment of publishing the decision of conviction, art. 565 Criminal Procedure Code provides that it is enforced by sending the excerpt, in the form established by the court, to a local newspaper which appears in the jurisdiction of the court which issued the conviction or of a national newspaper, for the publication upon expense of the convicted person.

Still, we consider that the moment for beginning the execution of a complementary penalty coincides with the moment of sending the excerpt from the final decision of conviction to the local newspaper which appears in the jurisdiction of the court which issued the decision of conviction or of a national newspaper, and the actual execution takes place the moment it is published.

Art. 33 of Law no. 253/2013 regarding the execution of the punishments, of the educational measures and of other measures without imprisonment decided by the legal bodies during the criminal trial provides that, in order to enforce the punishment of publishing the decision of conviction, the judge appointed with the enforcement sends the excerpt, in the form established by the court, to the local or national newspaper assigned by it, requesting the communication of the rate for publication.

Within 10 days from receiving the answer from the management of the assigned newspaper, the judge appointed with the enforcement communicates to the convicted person the cost of the publication and its obligation to make the payment within 30 days.

The news paper assigned shall publish the excerpt of the decision of conviction within 5 days from the date of payment and shall notify the judge appointed with the enforcement about the publication, communicating a copy of the published text.

If within 45 days from the communication made to the convicted person according to paragraph (2), the judge appointed with the enforcement does not receive the notification regarding the performance of the publication, shall proceed to checking the reasons which lead to its non-performance.

In case the management of the assigned newspaper does not supply the information provided in paragraph (2) or when it doesn't take the necessary measures in order to ensure the publication, the judge appointed with the enforcement can grant a new term for performing these obligations, which cannot exceed 15 days, or assigns another newspaper in the same category for publication.

If it is established that the non-performance of the publication was due to the fault of the convicted person, the judge appointed with the enforcement can grant a new term for publication, which cannot exceed 15 days.

¹¹V. Pașca, *Curs de drept penal. Part generală*, ed. a II-a, Ed. Universul Juridic, Bucharest, 2012, p. 441 - 442.

¹²I. Chiș comment in I. Pascu și colab., *Noul Cod Penal comentat*, Part generală, vol. I, Ed. Universul Juridic, Bucharest, 2012, p. 456.

If the convicted person did not make the payment for publication in the term provided by paragraph (2) or, according to the case, at paragraph (6), the judge appointed with the enforcement shall notify the competent criminal prosecution office, in relation to performing the offence of failure to comply with the criminal sanctions, provided by art. 288 paragraph (1) of Law no. 286/2009, amended and supplemented.

If upon enforcement of the decision or during the execution any query or prevention of the execution appears, the judge appointed with the enforcement can notify the execution court, which shall proceed according to the provisions of art. 595 and 596 Criminal procedure code.

Considering that the complementary penalty of publishing the decision of conviction is a newly introduced provision, we think it is not applicable in the case of the offences committed before its entry in force.

2. The complementary penalty of publishing the decision of conviction in case of the legal person

According to the provisions of art. 145¹³ Criminal Code, the display of the final decision of conviction or its publication is performed upon expense of the convicted legal person. By displaying or publishing the decision of conviction, the identity of other people cannot be revealed. The display of the decision of conviction is performed in excerpt, in the form and place established by the court, for a period between one month and 3 months. The publication of the decision of conviction is performed in excerpt and in the form established by the court, through the written or audiovisual media or through other audiovisual communication means, assigned by the court. If the publication is performed by written or audiovisual, the court establishes the number of the appearances, which cannot exceed 10, and in case of publication through audiovisual means, its duration cannot exceed 3 months.

In the legislation of our country we find similar provisions in the Criminal code of 1936 which, in

Section II - Complementary penalties, art. 25 paragraph 4 „publication and display of the decisions of convictions, in the conditions established by the law”, and in Chapter VI- Publication and display of the decisions, art. 61, shows that: „The final decisions which issue any of the criminal penalties provided by art. 22 is published by care of the prosecutor's office, in excerpt, in the Official Gazette and is displayed for at least one month on the door of the convict's residence, at the city hall of the commune where the offence was committed and to the one where the victim has its residence. In correctional terms, the court can order the publication of the decision of conviction, only after the request of the harmed party and only when the publication constitutes a way of moral repair. This provision is applied to simple imprisonment”.

Regulation of the complementary penalty of displaying the final decision of conviction as regulated by the new Criminal Code is similar to the one of the Criminal Code of 1968.

A first amendment of the lawmaker of the new Criminal Code is given by the replacement of the term "distribution" with the one of "publication of the final decision of conviction.

Another amendment consists in the explicit introduction of the provision according to which by displaying or publishing the decision of conviction the identity of other persons cannot be revealed {art. 145 paragraph (2) Criminal Code}, excluding in this manner the possibility to display or publish the decision in case there is the approval of the harmed party or of its legal guardian, as was the phrasing of art. 71⁷ paragraph (2) of the old Criminal Code. Considering these arguments, the complementary as regulated by art. 145 Criminal Code is more restrictive, allowing only to reveal the identity of the legal person, choosing in this manner a better protection for the damaged party.

In terms of its content, the complementary penalty of displaying or publishing the decision of conviction consists in notifying to the public the decision of conviction of a legal person which committed an offence provided by the criminal law¹⁴.

¹³ Art. 71⁷ Codul penal de 1968 – „The display of the final decision of conviction or its distribution is performed on the expense of the convicted legal person. By display or distribution of the decision of conviction the identity of the victim cannot be revealed, except there is his/her approval or the approval of his/her legal representative. The display of the decision of conviction is performed in excerpt, in the form and place established by the court, for a period between one and 3 months. The distribution of the decision of conviction is performed in excerpt and in the form established by the court, through the written or audiovisual media or through other audiovisual communication means established by the court. If the distribution is made through the written or audiovisual media, the court establishes the number of appearances, which cannot exceed 10, and in case of distribution through other audiovisual means, its duration cannot exceed 3 months”.

¹⁴ C. Marinescu, *Răspunderea penală a persoanei juridice. De la teorie la practică*, Ed. Universul Juridic, Bucharest, 2011, p. 235; With the criminal sentence no. 599/2013 of 09.07.2013 Court of Law of district 6 in the file no. 25294/303/2010 convicts the defendant Clinical Hospital „Prof. Dr. P. S.”, represented by its manager for committing the following offences: - manslaughter, provided by art. 178 paragraph (2) și paragraph (5) Criminal Code reported to art. 71¹ paragraph (2) Criminal Code, to the penalty of criminal fine in the amount of 400.000 lei (four hundred thousand lei); - accidental bodily injury, provided by art. 184 paragraph (2) și paragraph (4) Criminal Code related to art. 71¹ paragraph (2) Criminal Code, to the penalty of criminal fine in the amount of 80.000 lei (harmed party C. M. D.); - accidental bodily injury, provided by art. 184 paragraph (2) și paragraph (4) Criminal Code related to art. 71¹ paragraph (2) Criminal Code, to the penalty of criminal fine in the amount of 80.000 lei (harmed party C. A.); - accidental bodily injury, provided by art. 184 paragraph (2) și paragraph (4) Criminal Code related to art. 71¹ paragraph (2) Criminal Code, to the penalty of criminal fine in the amount of 80.000 lei (harmed party C. Ș.); - accidental bodily injury, provided by art. 184 paragraph (2) și paragraph (4) Criminal Code related to art. 71¹ paragraph (2) Criminal Code, to the penalty of criminal fine in the amount of 80.000 lei (harmed party S. R. M.); - accidental bodily injury, provided by art. 184 paragraph (2) și paragraph (4) Criminal Code related to art. 71¹ paragraph (2) Criminal Code, to the penalty of criminal fine in the amount of 80.000 lei (harmed party S. Ș. M.). În baza art. 53¹ paragraph 3 letter e) Criminal Code related to art. 71⁷ Criminal Code, beside each main penalty, applies to the defendant

It was assessed in the doctrine¹⁵ that the conviction of legal persons for committing offences is more efficient, as it can produce a very strong social impact if the decision of conviction is brought to the public knowledge, for the ones which might enter in relations with the legal persons in conflict with the criminal law without being warned by this circumstance. In this manner, the display or distribution of the decision of conviction is a penalty with positive effect in terms of the penalty's purpose, as it affects the market image of the legal person.

On the other hand it is considered that the display or publication of the decision of conviction is a complementary penalty with a considerable intimidating effect on the legal persons, affecting the image of the brand, the commercial reputation, the position of the legal person, and it can have as result the loss of the customers, the decrease of the credibility, and in certain situations might even have fatal consequences for the survival of the enterprise¹⁶.

The general preventive effect of this sanction is argued by the authors with the fact that, by threat of losing his prestige and image, the trader "of the consumerist era!", which sees his volume of sales endangered and his possibility to find new partners limited, shall take organizational measures in order to avoid it¹⁷.

The publication of the decisions is a special moral punishment, with a strong intimidating effect in case the legal person has notoriety in that locality, as well as in the cases in which the legal person does not benefit from notoriety, but the offences have produced a major impact in terms of interest of the public opinion, or in case the nature and seriousness of the crime raised a vivid interest for the community, as notifying to the public the offence committed by the convicted legal person certainly affects the present and future business relations. But we consider that in a certain measure a significant effect of the negative publicity is directly proportional with a more obvious moral connotation for the public and with the notoriety of the convicted legal person. In relation to this, we consider that the impact on the public is much higher when a legal person the consumers trusted is convicted than in the case of a less known legal person. Also, the impact is stronger if that product is known to the consumers and the offence for which the legal person was convicted is strictly related to it. In such situations, the publication of the decision has an increased effect in relation to the convicted person, and by power of

example, the case can contribute to the prevention of such offences.

The Criminal Code provides this complementary penalty for the prevention of the offences to be achieved also through publication, with the power of penetration of the mass-media means (written or audiovisual media) in the conscience of the citizens, but also in relation to the moral restoration which can be granted to the harmed person, which can obtain full satisfaction, especially if the offence has been performed using also the means provided by the mass-media.

Special legal provisions, established as non patrimonial measures for repairing moral damages, but with a similar content to the one of the complementary penalty established by the Criminal Code of 1968 are found also in other special laws¹⁸, such as Law no. 8/1996 regarding copyrights and related rights¹⁹ which provides in art. 139 paragraph (10) letter d) that „the owners of the violated rights can request to the court of law to decide the distribution of the information regarding the decision of the court of law, including the display of the decision, as well as its complete or partial publication in the mass communication means, on the expense of the offender; in the same conditions the courts can decide additional publicity measures adapted to the particular circumstances of the case, including a large publicity”.

The display or publication of the decision of conviction is established by the court of law considering the nature and seriousness of the crime, the circumstances and the person of the convict, in relation to its efficiency, for preventing the performance of such other offences.

We consider that this penalty must be applied for particularly serious offences, which bring public odium, without using the implementation attached to offences that are less serious. In case of particularly serious offences, especially when the penalty of dissolution or suspension of the activity is applied, the general interest of notifying third parties exceeds the private ones, belonging to the legal person which is criminally liable²⁰. The main argument of this reasoning consists in the fact that the application of this penalty, including for the offences which are less serious has as consequence a much more difficult integration of the legal person into society, despite the positive nature of the effects had in terms of penalty purpose. We can mention in relation to this a decision issued by a French court of law, which considered that one cannot impose the sanction of displaying or

the complementary penalty consisting in: **the display of the decision of conviction, in excerpt - on the operative part și only in relation to this defendant (without revealing the identity of the victims), on the main access door for the patients, in section A of the head office building, for two months.**

¹⁵ M. A. Hotca, *Drept penal. Part generală. Răspunderea penală și sancțiunile de drept penal*, Ed. C. H. Beck, Bucharest, 2013, p. 52.

¹⁶ C. Cășuneanu, *Răspunderea penală a persoanei juridice*, Ed. Hamangiu, Bucharest, 2007, p. 173.

¹⁷ D. M. Costin, *Răspunderea persoanei juridice în dreptul penal român*, Ed. Universul Juridic, Bucharest, 2010, p. 441.

¹⁸ G. Vintilă, C. Furtună – *Daune morale – Studiu de doctrină și jurisprudență* – Ed. All Beck, Bucharest, citat în E. Drăguț, *Sancțiunile aplicabile persoanei juridice în lumina noului Criminal Code*, *Dreptul Magazine* no. 12/2005, p. 166.

¹⁹ Published in the Official Gazette., Part I no. 60 of 26/03/1996.

²⁰ M. A. Hotca, *Drept penal. Part generală. Răspunderea penală și sancțiunile de drept penal*, Ed. C. H. Beck, Bucharest, 2013, p. 53.

publishing the decision given that, in the case, it might have fatal consequences for the existence of the enterprise²¹.

In relation to this, the complementary penalty of displaying or publishing the decision of conviction is a penalty with positive effects in terms of the penalty's purpose, affecting the image of the convicted legal person. It is a penalty which also achieves a strong general prevention, considering the prevention for committing new such offences.

The punishment is applicable for both intentional offences and offences by fault and it concerns all legal persons, as there are no categories of persons subject to exceptions. The sanction is optional for the court, and according to the case it shall be assessed if it is necessary to apply it, according to the nature, seriousness of the offence, the circumstances in which it was committed and the impact of the negative publicity performed in this manner.

The court of law can decide the publication in excerpt, in a form in which the content is explicit and understandable to the public opinion, in the exposure and impact form as visible as possible (on the first page, with a certain printing format, with a certain size of the letter or of the border) on the pages of a local or national newspaper. In relation to the form of display, it is obvious that the lawmaker refers to the manner in which the legal person has the obligation to ensure the display of the decision's operative part, respectively to the format of the ad, the sizes must be so that they allow the people which read the local or national newspaper to observe and read the ad. In order to reach the purpose of sanctioning, the publication must also include a short presentation of the de facto situation, as noted by the court of law, as well as the elements of the decision's operative part. From this reason, in the doctrine²² it was argued that the best it would be to be made in the form of a press release or a press conference²³, complying with the substance and form conditions for editing a press release. The communication is usually sent electronically to the press agencies from the written or audiovisual communication means which can take over the information that they shall use or not, according to their publishing policy, to the interest they think it shall have among the targeted public²⁴. We think that in case these institutions refuse the publication of the excerpt from the decision of conviction, it is enough for the legal person to prove she steps for publication, which doesn't follow the conditions of failure to comply with the criminal sanctions and consequently does not lead to the application of a harsher penalty.

The complementary penalty of displaying or publishing the decision of conviction is performed for a period between one month and 3 months, the lawmaker describing this complementary penalty as an undetermined penalty.

But in order to be enough, between committing the offence and the application of this sanction there must not be a too long time frame. Of course, this is a condition from which depends the efficiency of any sanction, but we would be inclined to believe that in case of the analyzed penalty the passage of time has an effect which is more reduced than in the case of another sanction²⁵.

The publication of the final decision of conviction is performed upon expense of the legal person, without these expenses exceeding the amount applied as criminal sanction.

When the publication is made by appearance in the written media (in a local or national newspaper) or audiovisual, or by other audiovisual communication means assigned by the court, it must establish the number of appearances, which cannot exceed 10, and in case of display, its duration cannot exceed 3 months.

The display or publication of the decision of conviction must not affect the subjective rights of the victim, reason for which the identity of the victim or of other people in the file cannot be revealed. The law regulated also the case in which in the circumstances of the case there are more people, which are also protected in relation to their right to private life, and their identity cannot be revealed.

Also this penalty can be applied together with the other complementary penalties, except the dissolution.

According to art. 502 paragraph (1) Criminal Procedure Code, the penalty of publishing the decision of conviction is enforced by communicating an excerpt of the decision of conviction which regards the application of the complementary penalty, the date it remains final, to the convicted legal person, to display it in the form, place and for the period established by the court of law.

An excerpt of the decision of conviction regarding the application of the complementary penalty is communicated, the date it remains final, to the convicted legal person, to be published in the form established by the court, on her own expense, through the written or audiovisual media or through other audiovisual communication means, established by the court.

From what we can see, the lawmaker talks about to means of notifying to the public the final decision of conviction of the legal person: by displaying the decision of conviction in excerpt and by publishing the

²¹ The Versailles Correctional Court, decision of 18.12.1995, JCP 1996, II, 22640, quoted in F. Streteanu, R. Chiriță, *Răspunderea penală a persoanei juridice*, ed. a II-a, Ed. C. H. Beck, Bucharest, 2007, p. 426.

²² E. Drăguț, *Sancțiunile aplicabile persoanelor juridice în lumina noului Cod Penal*, Dreptul Magazine no. 12/2005, p. 167; A. Jurma, *Persoana juridică – subiect al răspunderii penale*, Ed. C. H. Beck, Bucharest, 2010, p. 174; M. A. Hotca, *Drept penal. Part generală. Răspunderea penală și sancțiunile de drept penal*, Ed. C. H. Beck, Bucharest, 2013, p. 53.

²³ Ghe. Mărgărit – *Conceptul de răspundere penală a persoanei juridice în noul Cod Penal – Dreptul Magazine no. 2/2005*, p. 106.

²⁴ A. Jurma, *Persoana juridică – subiect al răspunderii penale*, Ed. C. H. Beck, Bucharest, 2010, p. 174.

²⁵ E. Drăguț, *Sancțiunile aplicabile persoanelor juridice în lumina noului Cod Penal*, Dreptul Magazine no. 12/2005, p. 167.

decision of conviction in excerpt. We think it is convenient to replace the term "distribution of the decision" in the old art. 71⁷Criminal Code with „publication”, as regulated by the new art. 145 Criminal Code, as it is more explanatory and more exact as content.

The display, as defined by the Romanian Explanatory Dictionary means "to expose, glue a flyer, make known through a flyer, manifest ostentatiously, publicly, put in a visible place". In this respect, we understand that the court of law shall hand over to the legal person the excerpt of the decision, which must be displayed, exposed in certain places explicitly provided by the court, so that the purpose of the penalty is better achieved. The display is performed upon expense of the legal person, in the time frame established by the court.

We think that the place where the display shall be performed is very important, as one must keep into account the recipient of the publicity. It was considered in the doctrine²⁶, opinion we also agree with, that in case the conviction is the consequence of an offence regarding labour protection, the head office or production facility of the legal person can be chosen for display, and when the conviction is a consequence of an offence regarding consumer's protection, the selling place of the products can be chosen, for corruption offences eventually head offices of the public institutions or professional associations.

In relation to this we think that the place where the excerpt of the decision of conviction is displayed is very important, as it is necessary for it to be frequented by the possible victims, but it must be related to the offence committed by the legal person.

Also, it is considered that the display of the decision of conviction shall be preferred in case the recipient public is in a small number and is related to a certain location (for example, the employees of an enterprise convicted for a labour protection crime shall be notified about its conviction if the decision is displayed at the head office and at every lucrative facility of the enterprise)²⁷.

Also, the excerpt of the decision of conviction is also communicated to the police office of the jurisdiction where the display place is, in order to check that the obligation has been complied with.

According to art. 40 din Law no. 253/2013 in case that after the display but before the term established by the court, the flyer is stolen, destroyed or deteriorated, the police authority requires the convicted person to display it again, which must be performed within 24 hours.

In case of failure to comply with the display obligation or with the obligation to replace the flyer according to paragraph (2), the police authority shall inform the judge appointed with the enforcement, in

order to notify the court for the application of the provisions in art. 140 paragraph (2) Criminal Code.

The publication means, according to the Romanian Explanatory Dictionary, „notifying something to everybody through printing, displaying etc.; publishing, printing books, articles, information etc., notifying a large range of people through the printer, notifying publicly, spreading, revealing”. In order to execute the penalty of publishing the decision, the court shall give to the legal person an excerpt of the decision, so that it can publish it in the form established by the court, on its own expense, through written or audiovisual media or through other audiovisual communication means, assigned by the court. Also, the publication of the decision of conviction can be performed by publication in the Romanian Official Gazette, Part IV or in one or more newspapers or in one or more audiovisual communication services, established by the court.

We can't help but wonder if the two means of informing the public can be combined by the judge. We think that as long as the law does not forbid it, they can be applied and executed in a cumulative manner, ensuring the purpose of the penalty more. Also, art. 138 Criminal Code provides the possibility to apply one or more complementary penalties considering the nature and seriousness of the offence, the circumstances of the case, and also if they are necessary.

It was also considered in the doctrine²⁸ that the publication in a gossip newspaper of an ad edited in an official language in relation to false accounting documents might not have any impact on the image of the convicted legal person as well as the distribution in an elitist publication, to which a reduced segment of the population has access, of the operative part of the decision of conviction for an offence regarding labour protection might be useless.

Also, the foreign legal doctrine²⁹ considers that the simple publication of the decision in excerpt, in a technical and official language, hard to understand for the regular citizen, cannot achieve the purpose of this sanction. This is the argument for which it was considered that the ad must be as explicit as possible, easy to understand by the public, because it is addressed to the general public and not to specialized person, with as few as possible technical data and with warnings for the possible victims, such as: "the legal person X was criminally convicted by the court Y for the offence Z. Pay attention to its products/services!".

We think that the excerpt must not be too long, so it can be read easily by the targeted persons and must present the situation in a synthetic manner.

The convicted legal person presents to the enforcement court the proof of starting the enforcement of the publication for the decision of

²⁶D. M. Costin, *Răspunderea persoanei juridice în dreptul penal român*, Ed. Universul Juridic, Bucharest, 2010, p. 444.

²⁷A. Jurma, *Persoana juridică – subiect al răspunderii penale*, Ed. C.H. Beck, Bucharest, 2010, p. 173.

²⁸D. M. Costin, *Răspunderea persoanei juridice în dreptul penal român*, Ed. Universul Juridic, Bucharest, 2010, p. 444.

²⁹J. Coffe, *No SoulToDamn: No body toKick*, quoted in D. M. Costin, *op. cit.*, p. 445.

conviction, within 30 days from the communication of the decision.

Art. 41 paragraph (3) of Law no. 253/2013 provides that in case it was decided to perform the publication by displaying it on an internet page, the excerpt must be published in the term provided by paragraph (2), and the convicted person shall communicate to the appointed judge, within 5 days from the start of the publication, the proof of enforcement of the decision. The periods in which, for technical reasons, the published excerpt was not accessible are not calculated in the publication period established by the court.

The judge appointed with the enforcement periodically checks the compliance with publishing obligation according to paragraph (1), until the term established by the court.

In case it is established that the publication obligation was not complied with, the judge appointed with the enforcement shall notify the court.

The violation in bad faith of the complementary penalty of displaying or publishing the decision of conviction has as consequences:

- a) the temporary application, for maximum 3 months, of the complementary penalty of suspending the activity or one of the activities of the legal person;
- b) the application of the complementary penalty of dissolution of the legal person, according to the provisions of art. 139 paragraph (2) Criminal Code, if it is established, after the maximum term of 3 months, that the legal person continued to oversee its obligation of distributing or displaying the decision.

We think that the harmed party whose interests have been affected by the illicit activity of the legal person can notify the enforcement court in relation to the failure to comply with the provisions in the final decision of conviction.

The legal person is summoned, and the participation of the prosecutor is compulsory. After the conclusions of the prosecutor and of the convicted legal person, the court judges through the sentence.

Considering that in the case of publication the approval of the mass-media institution is necessary, which can be given only in case it is considered this can be interesting for the targeted audience, we think that in case of refusal, the enforcement court must not apply a harsher punishment such as the suspension of the activity or the dissolution, as it is enough for the legal person to prove the attempt to publish the excerpt and respectively the attempt to begin the execution of the decision of conviction.

3. CONCLUSIONS:

Increasing the number of the prohibitions which can be applied by the court of law and implicitly of their application field, but also the introduction of new complementary penalties, also of the complementary penalty of the publication of the final decision of conviction, proves the orientation of the criminal policy to a highlighted individualization of the penalties, by enclosing to the main penalties proper complementary penalties in relation to the nature of the penalty, the seriousness of the offence committed, the actual circumstances in which the offence was performed, but also the person of the offender with its level of responsibility, understanding, education and training, previous criminal experience or belonging to another legal culture of a different country.

In this manner we think a better suitability of the sanction is achieved in relation to the actual circumstances of the case, increasing its efficiency significantly.

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