ROMANIAN COURTS HOLDING JURISDICTION IN THE IMPLEMENTATION OF THE PROBATION MEASURES

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Abstract

The new law of enforcement of sanctions and non-deprivation procedural measures, namely Law no. 253/2013 regulates "the jurisdictional nature of execution". This jurisdictional nature of the enforcement of sanctions and non-deprivation procedural measures reflects through the involvement of the courts in the resolution of a significant number of issues related to enforcement.

Courts, either by judges delegated with administrative or judicial-administrative competences, or by judges in full capacity and who performs purely judicial duties specific to the judicial function, are called upon to perform activities designed to ensure the enforcement of the precepts contained in the court order or to regularize the actual execution by solving the incidents that arise during the execution.

Keywords: *probation measures, the enforcement court, the judge delegated with the enforcement, the clerk delegated to the criminal enforcement department, the execution, the annulment and the revocation of the postponement of the punishment, the suspension of the execution of the punishment under supervision or the conditional release.*

Introductory remarks

The new law on the enforcement of sanctions and non-custodial procedural measures, namely Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the judicial bodies during the criminal proceedings, reminds of the "jurisdictional nature of the execution", giving it an entire chapter[1].

This jurisdictional nature of the enforcement of sanctions and non-custodial measures is reflected by involving the courts in many enforcement matters.

In the following, we will see that the courts, whether by judges delegated with administrative or judicial-administrative competences, or by judges constituted in full court, who perform exclusive judicial functions specific to the judicial function, are called upon to perform activities designed to ensure the enforcement of the precepts comprised in the judgments or regularize the actual execution by solving the incidents that arise during the execution.

In this first part, it is useful to specify that we will approach the courts only from the perspective of their competences in relation to the execution of the probation measures, leaving in the authors' charge, above all, the rules of criminal procedural law and those of judicial organization to deepen the organization and functioning of the courts and from other perspectives.

1. The enforcement court

Of the relevant legislative provisions we find that the first entity with competences in connection with the execution of educational measures is **the enforcement court**. This is defined by the provisions of art. 553 Code of Criminal Procedure and it is, with only one exception, the court that handled the case in first instance. The only court that can not be a court of enforcement is the High Court of Cassation and Justice, which, when judging in first instance, has legally delegated most of the specific jurisdiction to the Bucharest Court of Appeal or the military court law.

In connection with this legal delegation of functional competence, we feel the need to have some discussions. Art. 553 par. (3) final thesis of the Code of Criminal Procedure is rather imprecise, using the singular form when referring to the military court law, without indicating its full name (as it does with regard to the civil court), although, according to art. 56 para. (1) letter a) and par. (2), referring to Annex 2 of Law no. 304/2004 regarding the judiciary organization, the military courts in the country are four: the Military Courthouse of Bucharest, the Military Courthouse of Cluj, the Military Courthouse of Iasi and the Military Courthouse of Timisoara. In order to answer the question which of the four military courthouses are competent to enforce a criminal judgment on a case before the High Court of Cassation and Justice, some authors[2] propose to choose the solution according to the relevant provisions of art. 41, which regulate territorial jurisdiction for crimes committed on the territory of the

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[1] Chapter III of Title I from Law no. 253/2013.

[2] L. Postelnicu and C. Meceanu, in the *Code of Crminal Procedure. Comments on teh articles*, coordinated by M. Udroiu, C.H. Beck Publishing House, Bucharestti 2015, p. 1453.

country or on Romanian flag vessels or aircraft registered in Romania. In particular, given the order of preference which is deduced from the provisions of art. 41 par. (5), we believe that the military court of execution in the case of first instance judgments of the High Court, is the one in whose circumscription the criminal act was committed or the one in whose circumscription the first Romanian harbour is situated, where the ship is anchored and the offense committed or the first place of landing on the Romanian territory of the aircraft in which the offense was committed.

We believe that these provisions can be added to the art. 42 of the Code of Criminal Procedure, useful in the case of crimes committed outside the territory of the country.

Even if, as I have shown, we agree with the provisions of art. 41 Code of Criminal Procedure, to which we add those of art. 42 Criminal Code, *de lege ferenda* we believe that a legislative amendment would be required to align the military enforcement order in the first instance judgments of the High Court to the type of the civil enforcement order.

In support of this proposal we call the historical perspective in relation to the teleological one.

Thus, in the old Code of Criminal Procedure the Territorial Military Courthouse was designated as a military court to execute the first instance judgments of the High Court of Cassation and Justice, which was abolished by the provisions of art. 20 of Law no. 255/2013 for the implementation of the new Code of Criminal Procedure, but also the fact that, according to art. 21 par. (1) of the same law, the cases before the disbanded Territorial Military Courthouse of Bucharest were taken over by the Military Courthouse of Bucharest. Also, the teleological argument that subsisted in the designation of the Bucharest Courthouse as a civil court for the execution of the first instance judgments of the High Court, namely that of the spatial approximation of the two courts, is found, in a stronger word, also as regards the election of the Military Courthouse of Bucharest as a military court for execution of the first instance judgments of the High Court.

In conclusion, we consider that the Military Courthouse of Bucharest should be designated as the military court to execute the first instance judgments of the High Court of Cassation and Justice.

The enforcement body has two main types of functional competencies in relation to the execution of probation measures: *enforcement competences* and *enforcement competences to regulate (by solving some of the incidents during the actual execution).*

Some of their competences in relation to the execution of the probation measures are enforced by the court of enforcement and they are exercised by its judges who are constituted in court. These are, in general, *those competencies to regulate execution* by solving some of the incidents that occurred during the actual execution, which require a simplified trial.

This category of competences includes, in the first place, those related to the contestation of execution for the cases provided by art. 198 par. (1) letter (a), (b) and (d) of the Code of Criminal Procedure.

In the same category of competence it was included expressing the agreement to leave the country since the person whom was given a solution for deferment of penalty or a solution of suspended sentence under supervision sentence has the obligation not to leave the territory of Romania without the consent of the court.

Also, according to the provisions of art. 48 of the Law no. 253/2013, corroborated with those of art. 87, art. 95 and art. 103 of the Code of Criminal Procedure, in the course of enforcement, the enforcement authority is competent to amend the content of some of the obligations imposed on the supervised person, to impose new ones or to order the cessation of the execution of some of the previously ordered ones.

2. Judge delegated whit the enforcement

The competences for the enforcement of criminal judgments in general of those who institute probation measures are in particular exercised by the executing court through the judge whom it delegates to carry out a series of activities necessary to ensure compliance to the individuals at the court's discretion. Thus, according to art. 554 par. (1) Code of Criminal Procedure, the court of enforcement "delegates one or more of its judges to conduct the enforcement".

The activity of the judge delegated to execution is, as it results from the very "delegate" particle governed by the *rule of specialization*, according to which it is necessary for the duties in question to be exercised by trained and experienced judges in criminal matters. The rule of specialization is also deduced from the provisions of art. 29 par. (2) of the Rules of Internal Order of the Courts, approved by the Decision of the Plenum of the Superior Council of Magistracy no. 1375/2015, which gives the possibility of partial or total relief of the delegated judge to the execution of the trial.

The activity of the judge delegated to the execution is also governed by the *rule of continuity*, expressly provided by art. 29 par. (3) of the Law no. 253/2013, also enshrined in the provisions of art. 29 par. (4) of the Internal Rules of the Courts, which requires that the judge delegated to the execution remains, as a rule, the same throughout the period of execution. This rule of continuity, which is a transposition in the matter of the enforcement of criminal judgments of the principle of continuity that governs the entire court activity, acquires a special importance in the conditions of diversification of the competences of the judge delegated to execution, to whom we will refer in the following.

In the context of the new regulations that illustrate the configuration of the institution of the judge delegated to the execution, its functional competence is

made up of two categories of attributions: *administrative* (through which the functional competencies of the executing enforcement authority, which we have referred to above and which were entirely delegated to the judge in question, materializes) and *jurisdictional-administrative* (which gives the delegated judge a part of the competence of the enforcement instance regarding the regularization of the execution by solving some of the incidents during the actual execution).

The administrative tasks of the judge delegated with the execution are those through which he carries out the activity of enforcement of the criminal decisions.

The tasks in question are subsumed, according to art. 15 letter a) of Law no. 253/2013, as regards the probation measures, in order to ensure enforcement by communicating to the probation service and other community institutions involved in the execution of sentences and non-custodial measures, the children of the judgments they had the respective punishments or measures.

This task is reflected by an activity which is also known as the preparation *works of execution*, a phrase which is legally enforced by the provisions of the Rules of Internal Order of the Courts.

Of course, in carrying out this activity of mainly administrative and technical nature, the judge delegated to the execution is helped by the *clerk delegated with the execution*, a clerk whose special task is precisely to constitute real support for the judge delegated with the execution.

Besides, the importance but also the complexity of this administrative and technical activity to carry out criminal enforcement work is underlined by the need to delegate some of the judges and court clerks to deal exclusively or predominantly with this activity.

In the courts with a high workload, several judges and court clerks can be delegated with execution, and they carry out their work in the context of a functional court dismemberment called the *criminal enforcement department*.

The *execution works* (or under the equivalent designation of *enforcement*) include those activities that the delegated judge and the clerk delegated to the criminal enforcement department performs after the moment the judgment becomes enforceable in order to ensures the fulfilment of the provisions that are likely to be executed. It must be said that the meaning of the syntagma in question is quite broad, comprising not only the works which refer to the enforcement of the sanctions, the obligations, the express prohibitions contained in the provisions of the judgments, but also the works referring to the achievement of more distant effects of criminal proceedings, such as consequences (dismissal from the office, for example) or prohibitions not expressly contained in the provisions of the judgments and intervening as a result of provisions of the law (*opelegis*).

The execution work to be carried out in order to ensure that the provisions contained in the judgments are complied with, are: issuing various procedural documents (such as the mandate to execute the imprisonment or life imprisonment, such as the ban on leaving the country if we refer to custodial sentences); the drawing up of various addresses or other correspondence documents in connection with the enforcement activity; the communication of various procedural documents or extracts from them to the authorities with responsibility for the enforcement of judgments; transmission of data and extracts from judicial documents; the return, consisting of sending an address to an authority to which, previously, was sent or submitted procedural documents extracted from them or data relating to the enforcement of judgments; the request for information, which is an execution work complementary to the return; verification, which is a work of execution similar to the request for information and which is expressly provided by art. 154 par. (4) of the Rules of Internal Order of the courts regarding the situation of the collection of fines sent for execution; the referral, which is an enforcement work whereby unjustified delays in the execution of criminal judgments (as in the case of referrals under Article 154 (5) of the Rules of Court Internal Courts) or it is intended to clarify certain aspects of enforcement (as in the case of the referrals referred to in Article 554 (2) of the Penal Code and Article 29 (1) (f) of the Rules of Procedure of the courts).

In connection with the latter enforcement work, consisting in informing the executing court to clarify the unclear aspects of execution or to remove the obstacles to execution, a serious problem was raised in the doctrine regarding the incompatibilities that may arise when the judge who seizes is also entrusted with the resolution of the referral.

In view of the many aspects that may lead the delegated judge in charge of enforcement to bring the matter to court for clarification or to remove obstacles to enforcement, the answer to the question raised can only be that the degree of involvement of the delegated judge must be analysed in the expression of a point of view on the matter raised by the court of enforcement[3].

The judiciary-administrative competences of the delegated judge with the execution are a new category of tasks introduced with the latest reform of criminal and criminal law enforcement in our country, which took place in 2014 with the entry into force of the new criminal codes and enforcement laws.

This category of tasks of the delegated judge with the execution is also an expression of the judicial nature of the execution of sanctions and non-custodial measures, expressly enshrined in Law no. 253/2013 and to which I referred to the beginning of this work.

[3] D. Lupașcu, *Aspecte teoretice si de practica judiciara privind punerea in executare a pedepselor principale*, Universitatea București – Facultatea de drept, teză de doctorat, nepublicată, p. 98.

The development of the functional competences of the delegated judge with the execution by winning this new category of judicial-administrative attributions is natural in the context in which the alternative ways of executing sentences and measures depriving of liberty have been significantly diversified in the context of the new criminal law.

This diversification meant the rethinking of the criminal execution paradigm, by strengthening the role of the probation counselor in supervising the execution, by involving the community institutions in execution, but also by widening the competences of the delegated judge with the execution, which, according to the provisions of art. 14 par. (3) of the Law no. 253/2013, guides and controls the oversight process carried out by the probation service or the other authorities responsible for the execution of sanctions and non-custodial sentences.

In order to carry out its new guidance and control functions, the following administrative-judicial tasks were associated with the delegated judge with the execution:

The task to solve the incidents arising during the execution and which are not within the jurisdiction of the enforcement instance by the judges constituted in common law. In this subcategory there are tasks such as:

- the payment of the penalty in monthly instalments, attributed by art. 22 par. (1) and (2), with respect to the convicted natural person, and by art. 25 par. (2) and (3) of Law no. 253/2013, on the convicted legal person;
- granting permissions during the execution of the complementary punishment of prohibition of certain rights, attributed by art. 31 of the Law no. 253/2013;
- the designation of an institution in the community in which the unpaid work is performed if its execution is no longer possible in any of the two institutions in the community specified in the decision of the court of first instance, art. 51 par. (2), in case of delay of punishment, and art. 57 par. (2) of the Law no. 253/2013, in the case of suspended custodial supervision.

The task to solve complaints against the probation counselor's decisions, generally governed by art. 15 lit. f) and art. 17 par. (4) of the Law no. 253/2013. We will list below some situations, for executing the measures of probation, the probation officer shall take decisions which may form the subject of complaints competence appointed judge:

- the decision by which, according to art. 50 par. (1) of the Law no. 253/2013, the probation adviser establishes the course to be followed and the institution in the community in which the course is to be carried out, in case the supervised person is obliged to attend a school or vocational training course;
- the decision by which, according to art. 51 par. (1) of the Law no. 253/2013, the probation counselor establishes in which of the two institutions in the community specified in the judgment the community service work and the specific type of activity are to be performed, assuming the supervised person is obliged to perform unpaid work for the benefit of the community;
- the decision by which, according to art. 53 par. (1) of the Law no. 253/2013, the probation adviser establishes the program or programs to be followed and, where appropriate, the institution or institutions in the community in which they are to take place, if the supervised person is required to attend one or more social reintegration programs, conducted by the probation service or organized in collaboration with community institutions;
- the decision by which, according to art. 54 par. (1) of the Law no. 253/2013, the probation counselor establishes the institution in which the control, treatment or medical care is to be carried out, in case the supervised person is obliged to undergo control measures, treatment or medical care and where the institution has not been established by the court decision.

The task of judicial fines is provided, with a general norm value, through the provisions of art. 15 lit. g) of Law no. 253/2013.

In particular, in the matter of the execution of probation measures, the delegated judge with enforcement may apply fines in cases such as those provided by art. 19 par. (1) of the Law no. 253/2013, where community institutions contributing to the execution of sentences and non-custodial measures do not fulfill or inadequately perform the duties assigned to them and to which the judge entrusted with the execution may apply a judicial fine in an amount between 500 lei and 5,000 lei.

The task to empower community institutions with competencies in the execution of probation measures is another manifestation of the judicial nature of enforcement. The task is stipulated in art. 20 and art. 21 of Law no. 253/2013.

3. Court hearing at first instance to postpone punishment or suspension of custody

Besides the executing court, exercising its tasks regarding the execution of probation measures, as we have seen, either by the court hearing the execution or by judges constituted in panels court of common law, the law maker granted functional competences to *the court that pronounced at first instance the postponement of the punishment or the suspension of the execution of the punishment under supervision*. This category of courts is, as we will argue below, insufficiently complete and precisely outlined.

Through the provisions of art. 582 par. (2) and art. 583 par. (2) Code of Criminal Procedure, the court that issued in the first instance the postponement of the punishment or the suspension of the execution of the punishment under supervision, the competence to order the revocation of the postponement of the punishment and the revocation of the suspension of execution of the punishment under supervision in case of non-fulfilment

of civil obligations in the court decision is explicitly granted.

Of course, in most cases, the court that ruled in first instance the postponement of the punishment or the suspension of execution of the sentence under supervision is the very first instance court and thus also the court of execution.

However, there are also situations in which there is no identity between *the court of enforcement* and *the court that pronounced in first instance the postponement of the punishment or suspension of the execution of the sentence under supervision*, the simplest example being given by the hypothesis of the enforcement of the rulings issued by the High Court of Cassation and Justice in the first instance.

However, the previous example is not the only one, because, depending on the solutions contained in the criminal judgments and depending on whether or not the appeals are to be filed, either the first instance judgment will be delivered or the decision of the first instance as amended by the appeal judgment or the judgment given in the appeal.

For a better understanding, we believe we can evoke perfectly possible examples in practice, as follows:

- the hypothesis of postponing the punishment or conviction with suspension of execution of the punishment under supervision in the appeal after acquittal or cessation of the criminal proceedings in first instance;
- the hypothesis in which the decision of the first instance was abolished, through which a solution other than the acquittal or cessation of the criminal trial was adopted, but no solution to defer punishment or conviction with suspension of the execution of the punishment under supervision has been adopted, and the control court re-judged and pronounced for the first time a solution for postponement of punishment or conviction with suspension of the execution of the punishment under supervision.

Assuming that we reasonably argued the existence of the situations in which the enforcement instance is not identical with the court that pronounced in first instance the postponement of the punishment or suspension of execution of the punishment under supervision, we return to the analysis of the provisions of art. 582 par. (2) and art. 583 par. (2) Code of Criminal Procedure.

The legal texts invoked are, in our opinion, *incomplete* and *inaccurate*.

We say that they are *incomplete* because they should have covered the assumptions of revocation in cases of non-execution of the probation measures, more precisely of any measures and obligations of supervision out of those stipulated in art. 85 par. (1) to (4) and art. 93 par. (1) - (4) Criminal Code.

Such an addition is necessary in the context in which the functional court competent to order revocation in such cases is not sufficiently precise determined by the provisions of art. 86 par. (4) letter b), corroborated with those of art. 88 par. (1) Criminal Code, and the provisions of art. 94 par. (5) letter b), corroborated with those of art. 96 paragraph (1) Criminal Code, but neither those of art. 56 para. (1) or art. 57 par. (2) of the Law no. 253/2013. After reading the legal texts mentioned above, which refer only to "court", without specifying whether the court or other court (for example, the court that ordered in first instance the postponement of the sentence or the suspension of custody) remains the question *which is the functional court competent to order the revocation of the postponement of the sentence or the suspension of the execution of the punishment under supervision in case of non-execution or inadequate execution of the probation measures.*

We say that the provisions of art. 582 par. (2) and art. 583 par. (2) Code of Criminal Procedure are *inaccurate* because they use imprecise attributes to actually identify the competent court to order the revocation of the postponement of the sentence or the suspension of the execution of the sentence under oversight in case of non-fulfillment of civil obligations, namely the *first instance adjudication* of the postponement of the sentence or suspension of the sentence under supervision. The literal interpretation of this attribute, which should be the first interpretation to be used but sufficient to attempt to discover the true intention of the law maker, will lead to the conclusion that there are also situations that remain uncovered, namely those in which the delay of the sentence or the suspension of the sentence under supervision are pronounced for the first time in the appeal procedures. In such a case, perfectly possible in practice, there will not be a *court to first adjudicate* the postponement of the sentence or the suspension of the execution of the sentence under supervision, but only a *court that finally pronounced* the solutions in question. Therefore, a further question arises as *which is the court competent to order the revocation of the postponement of the sentence or the suspension of the execution of the punishment under supervision in case of non-observance of the civil obligations, but also in case of non-compliance - the inadequate execution or execution of the probation measures, when the solutions in question were given in the first phase of the call.*

We can give an answer to the first of the two questions (namely, which is the functional competent court to order the revocation of the postponement of the punishment or the suspension of the execution of the penalty under supervision in case of non-execution or inadequate execution of the probation measures) in the sense that the functional competent court is the *enforcement court*, once reading the provisions of art. 15 letter e) of Law no. 253/2013, which gives the judge delegated with execution the duty to notify the *enforcement court* in the cases provided by the law, inter alia, for the "revocation of non-custodial sentences or measures".

For drafting answer to the second question (which court is competent to order the revocation of the postponement of the sentence or the suspension of the execution of the sentence under supervision in the case of non-compliance with civil obligations, and in the event of non-execution or inappropriate enforcement of the probation measures, were the solutions had been given for the first time in the appeal) also an example of jurisprudence[4] leads us, from which it follows that although the suspension of the execution of the sentence under supervision was condemned by the final court[5], competent to revoke the suspension for non-execution of the probation measures was declared the first instance[6], which is also a court of enforcement.

In support of the same answer, we can also rely on another case-law[7] example, from which it results that although the suspension of execution of the punishment under supervision was first issued in the appeal, the competence to solve the request to revoke the suspension for non-payment of civil damages belongs to the first instance court execution.

Since the criminal procedural provisions here analyzed underpin the same criticisms and under the Code of Criminal Procedure of 1968, whose pertinent provisions regarding the revocation of the conditional suspension of the execution of the sentence or the suspension of the execution of the sentence under supervision[8] were similar, we believe it is useful to show that the jurisprudence developed in the light of those provisions has held that "the examination of the request to revoke the conditional suspension of the execution of the punishment (for non-payment of civil damages, nn) belongs to the court which judged in the first instance the case with the offense for which the sentence was the suspension of conditional execution, even if that suspension was ordered as a result of the appeal being upheld by the higher court"[9].

Although it seems that the jurisprudence has somewhat surpassed the legislative inaccuracy and the lack of coverage of all the assumptions that can be encountered in practice, based on the fact that the revocation is a matter of regularization of the execution, we believe that we could formulate *a lege ferenda* proposal that the law maker explicitly stipulates (as we will see below that it did in the case of conditional release) that the enforcement authority has the functional competence to order the revocation of the postponement of the punishment or the suspension of the execution of the sentence under supervision, both in the case of non-civil obligations and in the case of non-execution or inadequate execution of probation measures, i.e the supervision measures and the obligations and prohibitions accompanying the two alternative ways of judicially identifying criminal sanctions.

Such legislative clarification would be particularly welcome, especially when the High Court of Cassation and Justice ruled on the substance of the case in first instance, where, *de lege lata*, the supreme court has the functional competence to rule on the revocation of the postponement of the punishment and the revocation of suspension of the execution of the punishment under supervision at least for the case of non-fulfillment of civil obligations, i.e a matter of regularization of the execution, in the context in which the principle established by the provisions of art. 553 par. (2) Code of Criminal Procedure is in the sense of relieving this instance the taks of the enforcement court.

4. The court that ordered conditional release

With regard to the execution of the probation measures ordered in the case of conditional release with a remaining period to be executed for 2 years or more, the law gives tasks of regularizing the execution of the competent court to order the conditional release. We would like to point out that, as regards the enforcement competences of judgments ordering conditional release, the competent court to order conditional release also acts as an executing court.

According to art. 587 par. (1) the competent court to order conditional release is always "the court in whose jurisdiction the place of detention is located"[10].

According to the provisions of art. 588 par. (3) Code of Criminal Procedure "the court mentioned in art. 587 par. (1) also rules on the revocation of conditional release" in two cases:

- when, during the surveillance, the conditional

[4] By criminal sentence no. 11/2016 of the Court of Appeal of Târgu Mureş, the court, as executing court, declared competent to solve the petition regarding the revocation of the suspension of execution of the punishment under supervision, although this solution was given for the first time by the High Court of Cassation and Justice in appeal; the judgment is accessible in the electronic data base *Lege5.*

[5] As it is clear from criminal decision no. 4119/2011 of the High Court of Cassation and Justice - the Criminal Division, whereby the appeal as the last ordinary attack path according to the Code of Criminal Procedure 1986 reduced the penalty and changed the way of individualisation execution, effective enforcement, suspension under the supervision of the execution of the punishment; the court decision is accessible in the electronic database of the portal www.scj.ro.

[6] From criminal sentence no. 18/2010 of the Târgu Mureş Court of Appeal it results that this court has ruled on the merits of the case in the first instance; the judgment is not public.

[7] Criminal Sentence no. 27/2015 of the Bacău Court of Appeal, accessible in the electronic database of the portal *www.rolii.ro*, final by the criminal decision no. 705/2015 of the High Court of Cassation and Justice - Criminal Section, accessible in the electronic data base *Leg5*.

[8] See the provisions of art. 447 par. (2) of the Code of Criminal Procedure of 1968.

[9] Criminal Sentence no. 39/2005 of the Cluj Court of Appeal, cited by L. Lefterache in the *Annotated Criminal Code*, C.H. Beck Publishing House, Bucharest 2007, p. 292

[10] With regard to this way of conferring jurisdiction on the issue of conditional release exclusively for the first category of courts in the judicial system, namely the courts in whose territorial jurisdiction the places of detention are located, we only have the duty to state that, within the Constitutional Court of Romania there are four complaints submitted that criticize the law maker's option, as it results from the analysis of the electronic portal of the constitutional court www.ccr.ro.

released does not exactly execute the probation measures and

- when, after the release, the released one commits a new offense discovered in the term of supervision and for which a sentence was pronounced for imprisonment even after the expiration of that term, and the competent court to order the revocation of the release (that is the court that judges, or judged in first instance the offense of revoking, as it results from the provisions of article 588 (2), the last sentence of the Code of Criminal Procedure) did not rule on the revocation.

The latter functional competence granted to the conditional release court to order the revocation of conditional release for the commission of a new offense in the period of custody of conditional release, when the court which judges the new offense did not itself order the revocation, it reflects another difference of regime between the revocation of conditional release and the revocation of the postponement of the execution of the punishment or the suspension of the execution of the sentence under supervision, on the other hand, in these latter hypotheses, the court ordering the adjournment or the suspension without having revocation competences for committing new offenses within the surveillance terms.

As it can easily be seen in art. 588 par. (3) Code of Criminal Perocedure, the law maker uses the normative reference technique to designate the competent court to rule on the revocation of conditional release in the assumptions of the previous paragraph, which may rise difficulties in interpretation and application, since the text referred to reflects that "the court where the place of detention is", but at the time when the question of the revocation of conditional release is made, the convict may be either in a state of liberty or imprisoned at another place of detention, which may give rise to a question about which place of detention is concerned.

We believe that, as other author[11] has stated, the law maker wished to give, by questioning, the competence to rule on the revocation of conditional release in the hypotheses in question to the same court that ordered conditional release, but we believe, in order to remove any discussion, *de lege ferenda*, this intention should be expressed explicitly and directly.

From the analysis of the relevant legal provisions, we will find that the court that ordered conditional release does not have the functional jurisdiction to order the suspension of conditional release.

5. The court that judges or judged in first instance the offense that could lead to the revocation or annulment of the postponement of the punishment, the suspension of the execution of the sentence under supervision or the conditional release

Another court to which the law confers *competence to regulate the execution* of probation measures is, according to the provisions of art. 582 par. (1), art. 583 par. (1) and art. 588 par. (1) and (2) Code of Criminal Procedure, the court "that judges or judged in the first instance the offense that could lead to the revocation or annulment".

From reading these texts, undoubtedly it results that the law maker understood mainly to confer the functional competence to order the annulment or revocation of the three alternative means of enforcement to the court that "judges or judegd in first instance the offense that might entail the revocation or cancellation". This choice is a logical one, capable of promptly regulating the execution of the probation measures accompanying the postponement of the punishment, suspension of the execution of the punishment under supervision and conditional release.

But, as I have already pointed out, the law maker has shown inconsistency, choosing to regulate, without proper justification, a partially different regime from the point of view of the competent jurisdiction to order the annulment or revocation on condition of conditional release, on the one hand the hypothesis of the postponement of the punishment and suspension of the punishment under supervision, on the other. This different regime makes the provisions of art. 588 par. (2) Code of Criminal Procedure be inaccurate, as we will argue below.

The difference in question is that while in the case of postponement of the punishment and the suspension of the execution of the punishment under supervision, the competence to order the annulment and revocation (when committing a new offense) belongs exclusively to the court that judges or judged in the first instance the offense and that could be the subject of the revocation or annulment, in the case of conditional release, the jurisdiction in question remains exclusive only to the court which judges or judged in first instance the offense which leads to the *annulment*, because, in the case of an offense involving the *revocation* of conditional release, the revocation is no longer the sole responsibility of the court which in first instance judges the offense in question, but it is also granted to the conditional release court, which, according to the provisions of art. 588 par. (3) the last sentence of the Code of Criminal Procedure, it becomes competent to order revocation when the court which in first instance ruled the offense of revocation has not ruled on that.

[11] E. Dumbravă, *Conditional release in new codes*, Universul Juridic Publishing House, Bucharest 2016, p. 135.

The difference of the regime in question makes, as I stated above, that the provisions of art. 588 par. (2) Code of Criminal Procedure be inaccurate. The inaccuracy consists in using (by the method of referring to the previous paragraph of the law) at a past time of the verb *to judge*, when identifying the court competent to order the revocation of conditional release. In other words, if the conditional release body has the functional competence to order the revocation of a new offense when the court that in first instance judged this new offense did not rule on the revocation, it means that it is inaccurate to say that the court that judges or *judged* in first instance the offense of revoking conditional release is competent to order revocation.

More specifically, the court in charge of prosecuting the offense of revoking conditional release may order revocation only if it makes a decision on the offense of revocation and if it has not done so in that context to become competent to order even the revocation of the conditional release.

So, we believe that, *de lege ferenda*, if the law maker keeps the option of devoting alternative competences, the provisions of art. 588 par. (1), (2) and (3) Code of Criminal Procedure should be correlated with each other in order to give a precise meaning to the provisions governing the functional competence to order the revocation of conditional release in the case of a new offense, so that what follows implicitly from the corroborated interpretation of the said texts results explicitly, namely that the court in charge of the prosecution of the offense that leads to the revocation of conditional release may order revocation only if it makes a ruling on the offense of revocation, otherwise the jurisdiction in question will lie with the court of conditional release.

Considering that, in the matter of conditional release, the court which ordered the release is competent not only to revoke the release in case of non-execution of the probation measures, but also to revoke a new offense if the court that judged the case in first instance the offense that would lead to the revocation did not rule on the revocation of conditional release, *de lege ferenda* it would also be useful to regulate such a functional competence of the enforcement instance if the court that in first instance judged the offense that might attract the revocation of the postponement of the punishment or the suspension of the execution of the punishment under supervision did not give rise to the revocation.

This would bring about a regime unification in terms of functional competence in the matter of revoking (and in case of a new offense) the postponement of the punishment and the suspension of the execution of the punishment under supervision on the one hand and the revocation of conditional release, on the other hand.

Conclusions

In the matter of the enforcement of probation measures, but not only of them, there are several categories of courts that have different competences, such as: the enforcement court (either through the judges who are in full force, exercising exclusive jurisdictional tasks, or through the judge delegated with execution, which mainly exercises administrative powers), the court that gave in first instance the postponement of the punishment or the suspension of execution of the punishment under supervision, the court of conditional release and the court that judges or judged in first instance the offense that could lead to the revocation or cancellation of the postponement of punishment, suspended custody or conditional release.

Also after the analysis, including the reference to the case law, we have drafted some proposals of the law *de lege ferenda* that are meant to emphasize the need for the Romanian law maker to be more consistent when it regulates the competences of the courts in the enforcement of the probation measures.

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