THE NEW ROMANIAN CRIMINAL CODE – CHANGES SUGGESTED IN THE GENERAL PART

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Abstract

Through Law no. 286/2009, it was adopted a new Criminal code. The new Criminal code brings more changes both in the General part as well as in the Special part. Through this Criminal code, the Romanian lawgiver mainly pursued: to create a coherent legal framework from the criminal point of view by avoiding the useless overlapping of the norms in force existing in the current Criminal code and in the special laws; to facilitate the quick and unitary enforcement of the criminal legislation in the activity of the judicial organs; to transpose the regulations adopted at the European Union level into the national criminal legislative framework; to harmonize the Romanian criminal law with the systems of the other member states of the European Union. The study proposes to underline the main changes occurred in the General Part of the Criminal code.

Keywords: *Criminal code; Romanian criminal law, offence, punishment, justifying causes, immutability*

I. Introduction

The change of the legislation from the criminal point of view is, as in other domains, an issue that usually appears in the cases in which there are transformations of political, economic, social and cultural nature in the evolution of the society.

In the recitals that accompanied the draft of the new Criminal code, it was showed that the current sentencing regime regulated by the current Criminal code (come into force on January 1st 1969), submitted to some frequent legislative interventions on different institutions, led to a non-unitary enforcement and lack of coherence of the criminal law with repercussions on the efficiency and finality of the justice act[1].

Another argument invoked during the recitals points out to the necessity of placing the sentencing treatment within the normal limits, considering that the practice of the last decade proved that the efficient solution for fighting criminality was not the extreme increase of the punishment limits[2].

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[1] See www.just.ro.

[2] In the recitals, it is stipulated that during 2004-2006, about 80% of the punishments in the process of being enforced through prison punishment for theft and qualified theft were of at most 5 years of imprisonment which indicates that the courts of law did not consider necessary to apply the sanctions to the maximum upper limit stipulated by law (12 years in the case of a simple theft, 15 years, 18 years and 20 years in the case of the qualified theft respectively). On the other hand, the extremely wide range between the minimum limit and the maximum one of the punishment (from 1 to 12 years, from 3 to 15 years, from 4 to 18 years) led to more different solutions in practice with regard to the punishment applied for similar deeds or to greater punishments for infractions with a low injuriousness, which does not ensure the stipulated character of the justice act.

Nevertheless, through the new Criminal code, the lawgiver intended the simplification of the incrimination texts, the avoiding of the overlapping between various incriminations, as well as the overlapping of the special norms with the ones of the general part.

Finally, starting from the idea of ensuring the unity in the regulation of the offences, it was considered that it was necessary that some offences stipulated at present in the special criminal laws and that had a greater frequency in the judicial practice should be included in the content of the new Criminal code (information offences, road offences, etc.).

According to the recitals, the draft of the new Criminal code pursued the carrying out of the following targets:

- ❖ building a coherent legislative framework from the criminal point of view by avoiding the useless overlapping of the norms in force existing in the current Criminal code and in the special laws;
- ❖ simplifying the lawful regulations meant to facilitate their quick and unitary enforcement in the activity of the judicial organs;
- ❖ ensuring the complying with the exigencies resulting fundamental principals of the criminal law stipulated by the Constitution and by the pacts and treaties regarding the fundamental human rights to which Romania takes part;
- ❖ transposing the regulations adopted at the European Union level into the national criminal legislative framework;
- ❖ harmonizing the Romanian criminal law with the systems of the other member states of the European Union as a premise of the judicial cooperation from the criminal point of view based on mutual acknowledgment and trust.

Through Law no. 286/2009, the lawgiver adopted the draft of the new Criminal code that would come into force on a date set by thereof enforcement law (probably on March 1st 2013)[3].

Furthermore, we will present the main changes to the new Criminal code considering the provisions of the General part.

II. Analysis of the main changes existing in the General part of the new Criminal code[4]

1. Changes with regard to title I – *Criminal law and its enforcement limits*

Unlike the previous Criminal code, where it was dealt with in a single article, in the new Criminal code, the principle of the incrimination lawfulness and of the criminal law sanctions is „divided" into two articles: **incrimination lawfulness** (art. 1) and **criminal law sanctions** (art. 2). In the recitals, it is mentioned that the lawgiver pursued draw the attention on the consequences resulting from these rules – especially the forbiddance of the retroactive enforcement of the criminal law - both for the lawgiver and for the practitioner.

In art. 1 para. (2) of the new Criminal code, the content of art. 11 of the Criminal code in force appears slightly different. In art. 2 para. (2) and (3), there are the new provisions. According to art. 2 para. (2) of the new Criminal code: *„A punishment can not be applied or an educative measure or a safety measure can not be taken if this is not stipulated by the criminal law on the date when the deed*

[3] Law no. 286/2009 regarding the Criminal code was published in the Official Gazette no. 510 on 24.07.2009.

[4] For the analysis of the existing changes in the General part of the new criminal code, see the collective work *Explicații preliminare ale noului Cod penal*, Vol. I-II, coordinator George Antoniu, Universul Juridic Publishing House, Bucharest, 2011.

was committed". According to art. 2 para. (3): „*No punishment can be set and applied outside the general limits thereof*".

In relation to the criminal law enforcement, the lawgiver reversed the order of the two sections of chapter II, placing in the first section the norms regarding the criminal law enforcement in time and in the second one those regarding the criminal law enforcement in space.

The provisions regarding the more favorable criminal law enforcement during the criminal trial were completed with the provision of art. 5 para. (2) regarding the juridical regime of the unconstitutional normative acts (rejected or approved emergency ordinances with amendments), given that these continue to be applied to the juridical situations that are at the moment influenced by them to the extent they are obviously more favorable, although they cease their activity either entirely or partially.

Regarding the criminal law enforcement in transitory situations, the lawgiver opted for maintaining the compulsoriness rule of the more favorable criminal law incidence (art. 6) and for giving up the facultative enforcement of this law in the case of the definitive punishments, considering that this can not conciliate with the lawfulness principle.

We note here that art. 7 para. (2) of the new Code defines the expression of „*temporary criminal law*", unlike the previous regulation that does not contain such a definition. According to this text, **the temporary criminal law** is the criminal law that stipulates the date of its coming out of force or the enforcement of which is limited through the temporary nature of the situation that imposed its adoption.

Regarding the **territoriality principle of the criminal law**, besides the changes regarding the definitions of the expressions used within art. 8 of the new Criminal code that were posted in the same article, comparative to the technique used in the previous Criminal code that stipulates these definitions within the title reserved to the understanding of some terms and expressions, the lawgiver makes very important explanations.

It is the observations according to which the offence is considered committed on the territory of Romania also when an act of enforcement, instigation or complicity was committed or it even partially produced the result of the offence on this territory or on a ship under Romanian flag or on a ship registered in Romania.

For the incidence of the **personality principle of the criminal law,** it was introduced the **condition of the double incrimination,** but limited to the situation of the low and medium severity offences (at most 10 year prison punishment).

Regarding the **reality principle of the Romanian criminal law**, the lawgiver extended the incidence domain, including any offences committed abroad against the Romanian state, a Romanian citizen or a Romanian legal person.

The text designated for the **universality principle of the criminal law** was completely reformulated, considering that the current regulation has not been enforced in practice although it seems to offer an extremely wide competence to the Romanian juridical organs. The new content of the universality principle limits its enforcement exclusively to the situations when the interference of the Romanian criminal law is imposed in considering some internationally assumed engagements.

Finally, in the new Criminal code, it is regulated a new procedure, that is, the **delivery to an international tribunal**[5].

[5] For the analysis of the new texts that regulate the application of the criminal law in time and space, see George Antoniu, în *Explicații preliminare ale noului Cod penal*, Vol. I, page 21 and the following one. For a comparative approach of Criminal code in 1969 and Criminal code in 2009, see also Ilie Pascu, Petre Buneci, Noul Cod penal Partea generală şi Codul penal Partea generală în vigoare – Prezentare comparativă, Universul Juridic Publishing House, Bucharest, 2010.

2. Changes in the field of the offence institution

The new Romanian Criminal code also stipulates a general definition of the offence, but essentially different from the one in the Criminal code in 1969. According to art. 15 para. (1) of the new Criminal code: „*The offence is the deed stipulated by the criminal law committed with guilt, unjustified and imputable to the person that committed it*".

It is noticed that, besides the essential feature of the guilt and the deed stipulation in the criminal law, features that are found in the former definition, it has been added two more, that is: **antijuridicity** (unjustified character) and **imputability** (imputable character).

The unjustified character of the deed stipulated by the criminal law assumes that this is not allowed by the juridical order, being possible that a deed, although stipulated by the criminal law, should not be illicit because its committing is allowed by a legal norm. The causes that exclude the unjustified character of the deed are called **justifying causes** in the Criminal code. These are: self-defense, state of emergency, consent of the injured person and exercise of a right and carrying out of an obligation. Within the occidental theory and legislations, there is usually a demarcation between the two cause categories that determines the inexistence of the offence, that is: **justifying causes**[6] (based on the right of committing certain deeds called also objective causes of non- responsibility or that remove the unlawfulness or the illicit character of the deed) and **non- imputability causes** (called also non- culpability causes or subjective causes of non- responsibility – based on the lack of guilt).

The imputable character of the deed stipulated by the criminal law is achieved in all the situations when there is not a non- imputability cause. These are: physical constraint, moral constraint, irresponsibility, minor age of the doer, intoxication, error, non- imputable excess and fortuitous case.

The feature of the social danger lacks from the general definition of the offence because it was a useless one and at the same time specific to the Soviet inspiration legislations without connection to the traditions of our criminal law.

With regard to the **deed stipulation in the criminal law**, this assumes the requirement that the committed deed that is to be qualified as offence should correspond precisely to the description that the lawgiver makes in the incrimination norm.

Regarding the **guilt feature,** the lawgiver introduced in art. 16 para. (1) a provision without a correspondent in the Criminal code in force according to which the deed is an offence only if it was committed with the form of guilt required by the criminal law.

Another novelty is the provision of art. 16 para. (5) that defines the **oblique intent** (praeter intentionem) as a form of guilt. According to this norm, it is a case of oblique intent when the deed consisting of a deliberate action or inaction, causes a severe result that is owed to the doer's fault.

Finally, we state that the lawgiver unified the sentencing regime stipulated for the action and inaction committed with the same form of guilt. So, according to art. 16 para. (6), the deed consisting of an action or inaction is an offence when it is intentionally committed. The intentionally committed deed is an offence only if it is precisely stipulated by a law.

In art. 17 of the new Criminal code, the **offence by omission** is regulated as new in our criminal legislation.

According to art. 17 of the new Criminal code, the commissive offence that assumes the producing of a result is considered committed also by omission when:

[6] For more data regarding the justifying causes, see: George Antoniu, *Noul Cod penal*, C.H. Beck Publishing House, Bucharest, 2005, page 145 and the following one; Mariana Narcisa Teodosiu, *Cauzele justificative*, in R.D.P. no. 8/1998, page 109.

a) there is a legal or contracting obligation of taking action;

b) the author of the omission, through a previous action or inaction, created a state of jeopardy for the protected social value that eased the producing of the result.

The definition of the **attempt** was revised in the new Criminal code. In para. (1) of art. 32, the new Criminal code defines the attempt as the „*enforcement of the intent of committing the offence*", unlike the Criminal code in 1969 [art. 20 para. (1)], that defines the attempt as the „ *enforcement of the decision of committing the offence*".

Another change regards the cancellation of the provisions of art. 20 para. (2) of the former Criminal code, considering them as useless as long as the grounds of not producing the result in the case of the attempt have no relevance, being of any nature, but independent from the will of the doer in order to engage the criminal liability of this one.

Chapter V is properly entitled the „*unity and plurality of offences*", because, along with the norms that regulate the plurality of offences, there are also norms designated to set the juridical regime of two of the forms of the legal offence unity (complex offence and continuing offence).

The legal definition of the continuing offence was modified, being introduced a new condition, that is, the unity of passive subject.

Another change regards the definition of the complex offence where the expression „*as aggravated element or circumstance*" is replaced by the expression „*as constitutive element or as aggravated circumstantial element*", change required especially by the criminal doctrine.

The new Criminal code brought two necessary completions that it included in art. 37 para. (2) and (3). According to art. 37 para. (2), The complex offence is sanctioned with the punishment stipulated by law for that offence and according to art. 37 para. (3), the complex offence committed with oblique intent is sanctioned with the punishment stipulated by law for the consumed complex offence, if only the severer result of the secondary action was produced.

Regarding the main punishment enforced in case of **concurrence of offences**, the lawgiver opted for the absorption system, if life imprisonment was enforced for one of the concurrent offences, to the juridical plurality with an obligatory and fixed addition (of one third of the easy punishments) respectively, if only imprisonment punishments and fines were enforced for the concurrent offences.

As for the punishment of the concurrence, it was introduced a special provision that allows the court to be able to enforce life imprisonment in the case of having been committed more extremely severe deeds even if this one was not set for none of the concurrent offences.

Regarding the **recurrence** institution**,** we identify new elements both with regard to the definition and terms of the recurrence and with regard to the punishment. The temporary character of the recurrence is underlined when defining it. The terms of the recurrence were changed in the sense of increasing their limits.

Regarding the sentencing treatment of the recurrence, this one differs, being regulated the arithmetic addition in the case of post-sentencing recurrence and the increase of the special punishment limits with half in the case of the post- enforcement.

When the second term of the recurrence is made out of a concurrence of offences, it was set an algorithm of punishment enforcement difference from the existing one, enforcing first the provisions regarding the concurrence and then the ones incident in the case of the recurrence, system that is enforced even if only one of the concurrent offences are in a recurrence state, the rest being in intermediary plurality because the capacity of recidivist has to draw the treatment specific to this plurality form. As an exception as in the case of the concurrence of offences, it is stipulated the possibility of enforcing life imprisonment even if the set punishments consist in imprisonment when the number and severity of the committed deeds would justify it.

In Chapter VI, starting from the quality distinction that exists between the **doer** (co- doer) and the other **participants** (the doer directly commits the deed stipulated by the criminal law and the instigators and the accomplices intermediately commit the deed through the doer or co- doers), the new Criminal code stipulates distinctly the doer and the co- doers.

3. Changes with regard to the punishments

Regarding the new regulation of the punishment categories, this starts with the main punishments, continues to the accessory punishments and ends with the complementary punishments.

In the category of the complementary punishments, it was introduced a new punishment consisting in publishing the **final decision**.

In the new Criminal code, the **licence supervision** is no longer regulated in the chapter regarding the main punishments, but in the chapter regarding the punishment individualization, because, in practical terms, the licence supervision is an individualization form of the punishment.

The fine punishment has a new regulation, but also a significantly wider enforcement domain compared to the criminal code in force by increasing the number of the offences and their variants for which the fine can be enforced as sole punishment or as alternative punishment to the imprisonment punishment.

The calculation of the fine is made through the fine day system which, through the determination mechanism of the amount, is estimated that it ensures a better individualization of the punishment both in terms of proportionality expressed in number of fine days and in terms of efficiency by determining the value of a fine day by considering the patrimony obligations of the convict.

Another new element regards the introduction of the possibility of enforcing the **cumulative fine with imprisonment punishment** when the doer pursued to obtain patrimony assets through the committed offense. We believe that through this regulation, the lawgiver made a remarkable progress because the purpose of many offenders is to obtain material advantages.

Starting from the shortcomings of the previous regulation, which stipulates that the bad faith elusion of the convict from paying the fine leads to the replacement of the fine punishment to imprisonment only if the offense for which the sentence was delivered stipulates the fine punishment as an alternative to the imprisonment, the new Criminal code allows the **replacement of fine punishment** with the imprisonment punishment or of the enforcement of the fine punishment by providing community service.

The **accessory penalty** is regulated significantly different from the previous legislation in terms of both enforcement and content, as this accompanies the life imprisonment punishment or the imprisonment punishment.

With regard to the **complementary punishments**, the changes consist in reducing the maximum limit from 10 years to 5 years and in increasing the number of rights that are contained in this punishment. It was introduced in the content of the complementary punishment also a part of the sanctions that is at present in the safety measures, that is, the prohibition of being in certain localities, the expulsion of the foreigners and the prohibition of returning to the family home for a determined period of time, because these have a strong punitive character by their nature and mainly pursue to restrict the freedom of movement and only indirectly, because of this effect, it is achieved the elimination of the danger state and the prevention of committing new offences.

Another change regards the prohibition of exercising some rights, which is possible both besides the imprisonment punishment, regardless of its duration, and besides the fine punishment.

Other changes refer to the starting moment of the complementary punishment enforcement of prohibiting the exercise of some rights; two exceptions from the enforcement rule of this punishment

are set after the imprisonment punishment was carried out or considered carried out. It regards the conviction to fine punishment or, if it was ordered the measure of the conditional suspension of the sentence under supervision, the circumstances when the complementary punishment enforcement of prohibiting the exercise of some rights starts from its final decision.

Finally, it was introduced a new punishment, the publication of the final sentence in order to increase the efficiency of the justice act and to provide the moral repair to the victim.

The new Criminal code gives up to mention as individualization criteria the provisions of the general part and special part of the code, the causes that mitigate and aggravate criminal liability respectively, because these lead to the setting of the limits between which the judicial individualization will take place and know the specific regulations.

According to art. 74 para. (1), the setting of the punishment duration or quantum is made based on the **severity of the committed punishment and the offender's injuriousness** which is evaluated according to the following criteria:

a) circumstances and modality of committing the offence, as well as the used means;
b) state of danger created for the protected value;
c) nature and severity of the produced result or of other consequences of the offence;
d) ground of committing the offence and its purpose;
e) nature and frequency of the offences that are criminal records of the offender;
f) conduct after having committed the offence and during the criminal trial;
g) level of education, age, health, family and social status.

As for the **mitigating circumstances**, there are changes that regard the content of the mitigating circumstances and the effects of the mitigating circumstances. Under the aspect of the content, it was removed the circumstance regarding the good conduct behavior before having committed the offence and with regard to the effects, it was rethought their regulation under the aspect of the extent and determination modality of these effects.

The existence of the mitigating circumstances leads to the reduction by a 1/3 of the maximum and minimum special limit of the punishment stipulated by law. The reduction both of the minimum special limit and of the maximum one of the punishment gives the judge a greater consideration freedom in establishing the concrete punishment through the fact that it is no longer forced to lawfully enforce a punishment under the special minimum of the punishment, but it maintains this possibility to the extent the individualization operation leads to such a conclusion. At the same time, by reducing the special limits of the punishments with a fraction (1/3), it is achieved a proportional determination of the mitigating effect considering the abstract degree of danger set by the lawgiver for a certain offence.

Regarding the **content of the mitigating circumstances**, the lawgiver proceeded to a reevaluation of the circumstances that determined the worsening of the sentencing regime.

The aggravating circumstance regarding the committing of the offence due to low reasons was removed, because the committing of the offences is determined in most cases by immoral reasons and the content of this circumstance was never precisely delimited by the doctrine and jurisprudence.

In exchange, it was introduced a new aggravating circumstance consisting in **committing the offence by taking advantage of the obvious vulnerability state** of the injured person due to age, health, infirmity or other causes.

If there are aggravating circumstances, it can be enforced a punishment up to the special maximum. If the special maximum is not enough, in the case of the imprisonment, it can be added an addition of up to 2 years that can not exceed a third of this maximum and in the case of the fine, it can be added an addition of at most a third of the special maximum.

The new Criminal code regulates two institutions that have no correspondent in the previous Criminal code, that is, the giving up to the punishment and the postponing of the punishment enforcement.

The giving up to the punishment enforcement is the right of the court of not enforcing a punishment to a person that has committed an offence, considering the fact that it is enough for that person in order to improve to be enforced a warning because a punishment enforcement would risk to produce rather negative consequences than to contribute to the reeducation of the person in question.

The postponing of the punishment enforcement is the second new institution through which the punishment individualization can be achieved and consists in setting a punishment for a person that committed an offence, but which is not temporary executed if the set punishment is a fine or imprisonment of at most 2 years and the court considers that, based on the personal situation of the offender, the immediate enforcing of a punishment is not necessary, but it is imposed the surveillance of its conduct for a fixed period of 2 years, considering the persona of the offender and the conduct before and after having committed the offence.

The punishment enforcement suspension under supervision is the only individualization measure of the punishment execution of the three ones existing in the previous Criminal code (conditional remission of sentence, conditional remission of sentence under supervision and the punishment execution at the place of work), that was kept by the lawgiver.

The punishment enforcement suspension under supervision was reformed under more aspects that we will present further.

Thus, the carrying out of an unpaid job as community service is a characteristic that regards the punishment execution suspension under supervision because the obligation of carrying out such activity is set in charge of the convict, but only with its consent.

Another new element is that, in the new regulation, the punishment enforcement suspension under supervision does not cause the intervention of the lawful rehabilitation when the supervision term expires, but the rehabilitation will operate according to the common law and the term will derive from the reaching of the supervision term.

Starting from the idea of protecting the offence victims, the producing of the suspension effects is conditioned by the full carrying out of the civil obligations set through sentence, except for the case when the person proves that it had no possibility of carrying them out.

The regulation of the **licence supervision** institution is far different compared to the previous one; its changes regard the granting conditions and the social reintegration process of the convict through the active and qualified involvement of the state through probation councilors.

Under the aspect of the granting conditions, the lawgiver uniformed all the types of licence supervision (women, men, convictions for intentional and third degree offences, minors etc.). Thus, when granting the licence supervision, it is exclusively considered the conduct of the convict during the punishment execution (except for the persons over 60 years), considering that only in this way the conduct of the convict can be more efficiently influenced and shaped that gets an extra motivation knowing that a good behavior gets it closer to the release from prison.

4. Changes with regard to the safety measures

According to the new conception, the safety measures can be ordered including in the presence of a non- imputability cause, but not of a justifying cause.

The lawgiver, as we saw, passed a part of the safety measures to the complementary punishments. These are: prohibition of being in certain localities; prohibition of returning to the family home and the expulsion of the foreigners.

The reasoning of such a change regards the fact that such criminal law sanctions become incident in case of committing such deeds stipulated by the criminal law and due to their specific nature, it is necessary the completion of the direct repression expressed through the main punishment with differed secondary repression expressed in these complementary punishments[7].

Another new element is the reformulation of the content of the obligation to medical treatment and hospitalization.

5. Changes with regard to the criminal regime enforced to minors

According to the provisions of the new Criminal code, the only sanctions that can be taken against offending minors are the **educative measures** that can be divided into two categories: deprived and non- deprived of freedom.

The rule is that that the enforcement of the non- deprived of freedom educative measures [art. 116 para. (1)] has a priority because the deprived of freedom educative measures can be taken only in the case of severe offences or of those committed under the form of plurality of offences [art. 116 para.(2)].

The educative measure of the civil formation stage consists in the minor's obligation of taking part to an at most 4- month program in order to help him understand the legal and social consequences to which it exposes in the case of committing offences and in order to make it responsible with regard to its future behavior. The organizing, ensuring of the participation and supervision of the minor during the civic formation course are made under the coordination of the probation service without affecting the school or professional program of the minor.

The educative measure of the supervision consists in controlling and guiding the minor within its daily program for a period of time of two to 6 months, under the coordination of the probation service in order to ensure the participation to school classes or job formation classes and the prevention from carrying on some activities or coming into contact with certain persons that could affect the improvement program of this one.

The educative measure of the detention in weekends consists in the minor's obligation of not leaving the home during Saturdays and Sundays for a period of time of 4 to 12 weeks, except for the case that during this period, it has the obligation of taking part to some programs or of carrying on certain activities imposed by the court. The supervision is carried out under the coordination of the probation service.

The educative measure of the daily assistance consists in the minor's obligation of observing a program set by the probation service that contains the timetable and conditions of carrying on the activities, as well as the interdictions set to the minor. The educative measure of the daily assistance is taken for a period of time of 3 to 6 months and the supervision is carried out under the coordination of the probation service.

During the carrying out of the non- deprived of freedom educative measures, the court can impose the minor one or more obligations.

The educative measure of hospitalization in an educative center consists in the hospitalization of the minor in an institution specialized in minor recovery where it will attend a school preparation and job formation program suited for its skills, as well as social reintegration programs.

The educative measure of hospitalization in a detention center consists in the hospitalization of the minor in an institution specialized in minor recovery with a guard and surveillance regime where it will pursue intensive social reintegration programs, as well as school preparation and job formation programs suited for its skills.

[7] See recitals (www.just.ro).

6. Criminal liability of the legal person

Regarding the criminal liability of the legal person, it was maintained the principles contained in Law no. 278/2006, such as the direct liability of the legal person (assigned by the Belgian and Dutch law) and the necessity of the existence of a legal personality as premise for engaging the criminal liability of the collective entities.

According to art. 135 of the new Criminal code, the criminal liability of the legal person can be engaged by any natural person that acts under the conditions stipulated by the law and not just by the actions of the organs or thereof representatives.

The engaging of the criminal liability of a legal person is conditioned by the identification of a subjective element that can be different from the one found in the case of the natural person material author at least hypothetically.

Compared to the previous regulation, we note that the lawgiver operated the **restraining of the criminal immunity of the public institution** that carry on an activity that can not be the object of the private domain, this restraining to the offences committed in the carrying on of such activities.

The lawgiver brought changes also with regard to the individualization of the sanctions enforced to the legal person determined by the introduction of the fine day system.

The new Criminal code stipulates a new complementary punishment enforced to the legal person – **placement under supervision** that consists in the designation by the institution of a legal administrator or legal proxy that will supervise the carrying on of the activities that caused the committing of the offence for a period of time of one to 3 years.

7. Changes with regard to causes that eliminate the criminal liability

Title VII of the previous Criminal code was divided into three titles: Title VII "*Causes that eliminate the criminal liability*"; Title VIII "*Causes that eliminate or alter the sentence*" and Title IX "*Causes that eliminate the consequences of the conviction*".

When examining in comparison the provisions regarding the causes that eliminate the criminal liability, we consider that in the new Criminal code, it is mentioned with certain changes the previous provisions. Thus, in the text that regulates the **amnesty** [art. 152 para. (1)], the expression "*eliminates the criminal liability for the committed deed*" is replaced by the expression "*eliminates the criminal liability for the committed offence*";

It is also stipulated the date since when the prescription term of the criminal liability starts in the case of the offence and of the progressive one (since the date of committing the action or inaction and it is calculated based on the punishment corresponding to the definitive result).

8. Changes with regard to the causes that eliminate or alter the sentence

The provisions in this title are similar to the ones in the previous Criminal code, with two distinctions, the exclusion from pardon of the punishments the execution of which is suspended under supervision, except for the case when it is ordered differently through the pardon act and the breaking off of the prescription of the fine punishment execution if the obligation of paying the fine is replaced by the obligation of delivering an unpaid job for the community service.

9. Changes with regard to the causes that eliminate the consequences of the conviction

In this title, it is regulated the two rehabilitation forms: lawful rehabilitation and court rehabilitation.

With regard to the **lawful rehabilitation**, this one operates in the case of the fine punishment, imprisonment punishment that do not exceed 2 years or the imprisonment punishment the execution of which was suspended under supervision if the convict did not commit another offence within 3 years.

On the other hand, **the court rehabilitation terms** were reduced compared to the ones in the Criminal code in force. Thus, according to art. 166, the convict can be rehabilitated by the court, upon request, after reaching the following terms:

a) 4 years in the case of the conviction to an imprisonment punishment greater than 2 years, but that it does not exceed 5 years;

b) 5 years in the case of the conviction to an imprisonment punishment greater than 5 years, but that it does not exceed 10 years;

c) 7 years in the case of the conviction to an imprisonment punishment greater than 10 years or in the case of the life imprisonment punishment commuted or replaced by imprisonment punishment;

d) 10 years in the case of the conviction to life imprisonment punishment considered executed as a result of the pardon, reaching the prescription term of the punishment execution or licence suspension.

The convict deceased before reaching the rehabilitation term can be rehabilitated if the court considers that it deserves this benefit after having evaluated the behavior of the convict up to its death.

10. Changes existing within title X- ***Understanding of some terms or expressions in the criminal law***

Compared to the previous Criminal code, the new Criminal code brings certain amendments and completions. First, we note that some definitions were transferred from this title to others. It regards the expressions: „the territory of Romania", „offence committed on the territory of Romania".

Regarding the meaning of the notion of **crime law**, this was agreed with constitutional regulations in force. According to art. 173, by criminal law, it is understood any provision with criminal character included in organic laws, emergency ordinances or other legal acts which were acting as laws (laws, decrees of the former State Council, law-decrees) by the time of their adoption.

The notion of **public clerk** was reformulated. The new Criminal Code opted for the assimilation of the natural persons that carry out a profession of public interest that requires a special ability of the public authorities and that is subjected to their control (for instance, notaries and judicial executors) to public clerks.

The notion of family member in the new concept absorbs the notion of close relatives, including also persons who established bounds similar to those between spouses or between parents and children on condition of living together.

The content of title X was completed with more definitions that are not found in the old Criminal code and that are used in regulating some offences taken from the special legislation (information system, exploitation of a person and electronic payment instrument).

III. Conclusions

Based on the above analysis, we can notice that the new Criminal code brings numerous changes within the institutions of the General part. Some of the changes operated by the lawgiver are

meant to improve certain legal deficiencies that were encountered in practice. For instance, with regard to the causes of inexistence of the infraction (consent of the injured person, exercise of a right or carrying out of an obligation) or with regard to the forms of the legal unity of the offence.

Other changes were brought in order to stop certain controversies existing in the specialty doctrine of in the juridical practice. For example, with regard to the content of some circumstances (low reasons, conduct of the offender, etc.) or of the institution of the deed that does not have the social danger degree of an offence.

On the other hand, we notice that certain changes of the General part of the new Criminal Code reflect a change of the criminal policy of the Romanian state. We note here the sentencing regime of the offense plurality, the general definition of the offense, the criminal law application over the time, sanctions regime or the regime applicable to juvenile offenders, the enforcement of the criminal law in time, the punishment regime or the regime enforced to the minor offenders.

Only time will tell if the General part of the new Criminal code is or is not a step forward from a legislative point of view.

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