JOURNAL OF EASTERN-EUROPEAN CRIMINAL LAW

No. 1/2014

Evolution of the Penal Legislation in Romania and Hungary, in the Post-Communist Era

2014

Romania's New Penal Code and the Saga of its Adoption

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Abstract:

The decision to proceed to the drafting of a new Penal Code was not a mere manifestation of the political will, but equally represented a corollary of the economic and social evolution - and also of the doctrine and case-law - and was based on a series of shortcomings in the regulation of the 1968 Penal Code.

A very important role in the harmonization of the legislation with the constitutional provisions has been played by the Constitutional Court, both through its a priori and a posteriori judicial review, the latter taking the form of the settlement of the constitutional challenges raised before the courts.

The harmonization of the provisions of the Penal Code with the new constitutional order was performed in this manner, followed, but not always, by appropriate legislative changes.

Following the overturn of the communist regime, the 1968 Penal Code was amended or supplemented 54 times, out of which 23 times by means of Government Emergency Ordinances, in order to put in line with the new constitutional regulations and the requirements of Romania's European integration process.

Keywords: *new Penal Code; enforcement of the Romanian criminal law in time; enforcement of the Romanian criminal law in space; plurality of offences; criminal liability of legal persons.*

Responding to the monitoring requirements of the European Commission, the new Penal Code has, as a starting point, the necessity to take over elements which could be maintained from the previous Penal Code, as it had been modified along the way, and their integration, based upon a unitary concept, next to elements taken from other systems of reference, but also from the rules adopted at EU level in order to achieve the area of freedom, security and justice.

In the drafting of the code, one has intended, on the one hand, to accentuate the tradition of the Romanian criminal legislation and, on the other hand, to connect with the current regulatory trends from the landmark legal systems of the European criminal law.

Following a failed Penal Code, repealed before even coming into force,[1] the current Penal Code was adopted through Law no. 286/2009.

Published in the Official Journal, Part I no. 510 of 24/07/2009, the new Penal Code, immediately after birth, has been submitted to modifications by means of two laws, passed within an interval of less than one month, an utter example of lack of consistency and perspective in a criminal policy which sees itself as reformatory, although the distinguished members of the Cabinet had forgotten the fact that they had committed, within 12 months from the date of the Penal Code's publication in Romania's Official

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[1] Penal Code from 2004 (Law no. 301/2004, Official Journal of Romania no. 575/29.06.2004).

Journal, to submit to the Parliament a draft law for the implementation of the Penal Code, a good opportunity to make the desired amendments.

The absurdity of the legislative process and the lack of legislative strategy have caused the Parliament to adopt, within one month, two laws identically defined: the Law for the modification and completion of the Penal Code of Romania and Law no. 286/2009 regarding the Penal Code, thus modifying both the previous and the current Penal Codes.

The first one, Law no. 27/2012,[2] through which both Penal Codes are amended, refers to the imprescriptibility of criminal liability for those deliberate offenses which resulted in the death of a person.

The second one,[3] Law no. 63/2012, regulates, among the safety measures, distinct from the special confiscation, the extended confiscation, but also the doubling of the special limitation period for criminal liability.

It took almost five years since the publication of the current Penal Code for it to enter into force on February 1st, 2014 as a result of Law no. 187/2012[4] which, in turn, has brought some changes to the original shape of the Penal Code.

The entry into force was preceded by disputes and politicking attempts to amend the notions of civil servant and conflict of interests.

The amendments to the Penal Code adopted by the Chamber of Deputies on December 10th, 2013 have caused the biggest scandal in the field of justice from last year. Through one of the amendments, the president and the members of Parliament have been removed from the category of civil servants provided under the Penal Code.

The same day, the Chamber of Deputies approved another bill of amendment of the Penal Code, rejected by the Senate in October 2012, which changes the content of the article regarding the conflict of interests by removing the category of civil servants. The bill was introduced on the supplementary agenda of the Chamber and was voted without a prior publication of the committee's report and without a debate in plenary.

The proposed amendments were rejected by the Constitutional Court[5] after an enormous media scandal, known as "the Black Tuesday", from December 10th, 2013 in Parliament[6].

The new Penal Code contains, following the established structure, two parts, general and special.

The general part gathers the rules applicable to all the offenses covered by the criminal legislation, regardless of their nature, demarcates the general scope of the criminal law, defines the offense, establishes its general characteristics and constituents, and regulates the general conditions of criminal liability, the penalties and their application.

The special part includes the main offenses, grouped according to the social values whose protection is achieved through their incrimination. The legislator envisaged to include in the special part of the code those categories of offenses with which the legal practice gets confronted more frequently.

The general part of the code gives the due importance to the principle of the legality of incrimination (Article 1) and the principle of the legality of punishment (Article 2), turned into constitutional principles following the adoption of the 1991 Constitution.

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[2] Published in the Official Journal of Romania, Part I, no. 180 from 20/03/2012.

[3] Published in the Official Journal of Romania, Part I, no. 258 from April 19th 2012.

[4] Published in the Official Journal of Romania, Part I, no. 757 from November 12th 2012.

[5] Constitutional Court, Decision no. 2/15.01.2014; Official Journal no. 71/29.01.2014.

[6] www.hotnews.ro/stiri-politic.

As to the **enforcement of criminal law in time**, it was necessary to supplement the provisions regarding the enforcement of the most favourable criminal law in the course of the trial with the provision regarding the situation of the unconstitutional normative acts, namely of the emergency ordinances which have been rejected or approved with amendments, given the fact that such acts, although they cease - in whole or in part, as the case may be – to produce effects, continue to be applied to the legal situations found, at some point, within their scope of application, inasmuch as they are more favourable.

In the regulation of the mandatory enforcement of the more favourable criminal law, the legislator envisaged the situation of the cases on trial, as well as of the cases having received a definitive judgment, but in the latter case only if the penalty imposed is greater than the legal maximum of the penalty provided by the new law, the constitutional principle of the legality of punishment, a limitation of the *res judicata* inasmuch as the penalty imposed is greater than the special maximum of the penalty provided by the new law.

As to the **enforcement of the Romanian criminal law in space**, the introduction of the requirement of the double incrimination, provided by the majority of European legislations, imposed itself on the basis of the personality principle. In order to avoid the unnecessary loading of the Romanian judicial authorities with cases that might never be solved due to the impossibility of their instrumentation, the legislator provided in such cases, as a condition for the initiation of the criminal proceedings, the authorization of the attorney general from the Public Prosecution's office next to the Court of Appeal.

As for the enforcement of the Romanian criminal law under the reality principle of the Romanian criminal law, it was decided to bring in its sphere of incidence all the offenses committed abroad against the Romanian state by a Romanian citizen or legal person.

The enforcement of the Romanian criminal law under the universality principle circumscribes even more precisely its sphere of incidence, by limiting it to those situations where the intervention of the Romanian criminal law imposes itself by reason of international commitments, as is the case of those offenses which Romania undertook to suppress under an international agreement or in those situations in which the extradition was denied, when the principle *aut dedere aut judicare* requires that the case be investigated by the solicited state.

The new Penal Code, just like the Penal Code, contains the definition of the offense, although neither the Romanian Penal Codes of 1864 and 1936 nor the majority of legislations provide such a definition, since it is considered to fall within the competence of the doctrine.

The offense is defined as the deed provided by criminal law, committed with guilt, unjustified and imputable to the person who committed it. The elements of the offense, as drawn from the above mentioned definition, are: the legal element (its provision by criminal law), the moral or subjective element (the guilt), antijuridicity (an unjustified deed), and imputability.

The legislator defines the legal forms of guilt: direct intent, indirect intent, recklessness and negligence, as well as the exceeded intention (praeterintention).

We are in the presence of intention when the perpetrator foresees the result of his/her deed and aims at achieving it through committing the respective deed (direct intent), or when he/she foresees the result of his/her deed and, although he/she does not pursue it, he/she accepts the possibility of its occurrence (indirect intent).

The deed is committed with recklessness when the perpetrator foresees the results of his/her deed, but does not accept it, groundlessly believing that it would not occur (recklessness, foolhardiness), or he/she does not foresee the result of his/her deed, although he/she should have and could have foreseen it (negligence).

We are in the presence of exceeded intent when the deed, consisting of a deliberate action or inaction, produces a more serious result, due to the fault of the perpetrator.

The deed consisting of an action or inaction constitutes an offense when committed with intent. The deed committed with negligence constitutes an offense only when expressly provided by law.

As regards the offense committed by omission, recognized as such by the Romanian doctrine and legal practice as well as by the majority of European legislations, the Romanian legislator has provided two main hypotheses in which the inaction can be assimilated to the action, namely: the existence of a legal or contractual obligation to act or the existence of a previous action of the perpetrator, which had created a state of danger for the protected and wronged value.

The legislator has regulated as justifying causes those circumstances which remove the unjustified nature of the deed: self-defence, state of necessity, the exercise of a right and the fulfilment of an obligation (order or authorization of the law and command of the legitimate authority) and the consent of the victim, if the latter was allowed to legally dispose of the harmed or endangered social value.

The justifying causes operate *in rem*, their effects being extended over the participants as well.

It is considered to act in self-defence the person who commits a deed in order to block a material, direct, immediate and unjust attack which threatens his/her own person or another one, their rights or a general interest, provided the defence is proportionate to the seriousness of the attack.

It is presumed (relative presumption) to act in self-defence the person who commits the deed in order to prevent the entry of a person into a house, room, outbuildings or enclosed spaces belonging to the former, without right, by means of violence, deception, burglary or other such illegal means or during the night.

The causes of non-imputability are personal ones, which do not accrue to the rest of the participants, and they will only benefit the person who acted under their influence, with the exception of the hazardous, unforeseeable event *(cas fortuit)*. They remove the third essential feature of the offense - imputability.

The causes of non-imputability are: physical or moral coercion; the justified excess of defence (exceeding the limits of self-defence due to unrest or fear); the perpetrator is a minor (the minor under 14 years of age or, being 14-16 years old, does not possess discernment), irresponsibility; complete involuntary intoxication with alcohol or other psychoactive substances; the error of fact or concerning an extra-criminal statutory provision or because of an erroneous understanding of its unlawful nature and the hazardous event.

A new regulation was given to **the plurality of offences**; unlike the previous Penal Code, the new Penal Code regulates three forms of the plurality of offenses retained in the criminal doctrine and confirmed by judicial practice, namely: concurrent offenses, relapse into crime and intermediate plurality of offenses.

In the case of concurrent offenses, when a person commits two or more offenses before being convicted for any of them, the legislator opted for the system of absorption in the hypothesis in which for one of the concurrent offenses was applied the penalty

consisting in life imprisonment and, respectively, the cumulative sentencing system with mandatory penalty increase, if the concurrent offenses were punishable only by fine or punishable one with imprisonment and the other one with a fine, and applying the heaviest penalty, increased by one third of the others' total.

Last but not least, in the matter of sanctioning concurrent offenses, the legislator introduced an exceptional provision which allows that, in the situation of committing several very serious offenses, of which at least one imposes a sentence of 20 years or more, and, by adding the increase of one third of the others' total, the penalty resulted would exceed the general maximum of imprisonment - which is of 30 years - the court may apply life imprisonment, even if this penalty had not been established for any of the committed offenses.

The temporary nature of relapse into crime is highlighted in the very definition of this form of plurality of offenses. The terms of relapse have been changed - their limits have increased; at the first term, the imposition of a penalty of one year or more, and at the second term, for committing an intentional offense for which the law provides a penalty of more than one year.

In the matter of the sanctioning regime, the regulation was simplified by recourse to an arithmetic accumulation in the case of the post-conviction relapse into crime and, respectively, to a legal increase of the special limits of the penalty with a half, in the case of the post-release relapse into crime.

The legislator has consecrated, in the matter of the post-conviction relapse into crime as well, by way of exception, the possibility to apply life imprisonment - even if the penalties established consist in imprisonment - in those cases in which the accumulation of penalties would exceed the general maximum of the prison sentence, which is of 30 years.

As far as the plurality of offenders is concerned, the code defines the activity of the author and the co-author as people who directly execute the deed provided by the criminal law, and the instigators and accomplices are those who commit the deed indirectly, by means of the author.

The new Penal Code retains the institution of improper participation, which has become a tradition in Romanian criminal law and which has functioned smoothly and with no difficulties in practice, to the detriment of the theory of the mediate (indirect) author. The regulation of the improper participation was, however, completed with the provisions regarding co-authorship.

Regarding the categories of penalties, the new regulation starts with the principal penalties, continues with the accessory penalties and ends with the complementary penalties and, as elements of novelty, in the category of the complementary penalties, the content of the penalty regarding the ban of certain rights was diversified and a new penalty was introduced, consisting in the posting or publication of the definitive judgment of conviction.

The principal penalties are life imprisonment, imprisonment and fine.

Life imprisonment consists in the deprivation of freedom for an indefinite period of time, but does not apply to those who, upon the date of the pronouncement of the conviction, had already reached the age of 65; instead of life imprisonment, they will receive the penalty of imprisonment for 30 years and the penalty of the prohibition of exercising certain rights throughout its maximum duration. If the convict who executes life imprisonment reaches the age of 65 whilst executing his/her punishment, the penalty of life imprisonment may be replaced by imprisonment for 30 years and the

penalty of the prohibition of exercising certain rights throughout its maximum duration, if the respective convict had a good conduct throughout the carrying out of the sentence and has fully fulfilled all the civil obligations established by means of the sentence, unless he/she can prove that he/she had not been given the opportunity to fulfil them, and has made steady and manifest progress with a view to his/her social reintegration.

Imprisonment consists in the deprivation of freedom for a determined period of time, ranging between 15 days and 30 years, the custodial regime being established according to the law regarding the execution of penalties in relation to the length of the penalty.

The court may suspend the execution of the prison sentence on probation if this is up to 3 years, including in the case of concurrent offenses, when the court considers that, taking into account the person of the offender and his/her behaviour before and after the offense, the application of the penalty is sufficient, even without its enforcement, but the offender's behaviour still need to be monitored for a determined period of time.

The probation period in the case of suspension is a variable one, ranging from 2 to 4 years, but not less than the length of penalty imposed, and the probation system should have a flexible and varied content, allowing both the verification of the offender's behaviour (the offender can be forced not to go to certain places, sporting or cultural events, or to other public meetings, established by the court, not to communicate with the victim or with members of the victim's family, with the people together with whom they committed the offense or with other people, determined by the court, or to stay away from them etc.) and the support offered to the offenders in order to realize the risks to which they expose themselves by committing offenses or to facilitate their social integration (the offender may be required to attend a training school or vocational qualifications, to perform unpaid community service work for a period between 30 and 60 days under the conditions established by the court, to attend one or several programs of social reintegration, to undergo control measures, medical treatment or care etc.).

The system of obligations throughout the probation period is also very flexible, allowing the court to adjust it in relation to the behaviour of the person on probation either by imposing new obligations, increasing or decreasing the conditions provided for the enforcement of the existing ones, or even by ceasing the execution of some of the obligations which it had initially imposed, in order to ensure increased chances of reformation.

The exercise of probation was entrusted to the probation services which operate next to the courts of justice, the probation counselors being people specialized in this kind of activities, in order to be able to contribute in a qualified manner to the process of social reintegration.

The fine penalty now has a new regulations, and also a significantly expanded scope as opposed to the Penal Code in force, by increasing the number of offenses or variations thereof for which a fine may be imposed as a unique penalty, but, especially, as an alternative penalty to the prison sentence.

The setting of the fine is done through the day-fine system, which, by means of the mechanism which determines the amount of the fine, provides a better individualization of the penalty, concretely applied both in terms of proportionality, expressed in the number of days-fine, and of effectiveness, through the establishment of the value of a day-a fine taking into account the patrimonial situation of the convict.

The general limits of the number of days-fine are between 15 and 400 days, and those of the value of a day-fine, between 10 and 500 lei. Regarding the special limits, only the limits of the number of days-fine are progressively variable, since they are determined in relation to how the incrimination rule provides the fine to be either a unique penalty, or an alternative to the prison sentence of certain duration. The court can either increase the special limits of the fine penalty or apply the fine cumulatively to the prison sentence, in those cases when the offense was committed in order to obtain a patrimonial gain.

In the hypothesis in which the convict acts in good faith, but is unable to carry out, in all or in part, the fine penalty and cannot be foreclosed for non-accountable reasons, the court, with the prior consent of the convict, replaces the days-fine with a corresponding number of days of community service. Regulated in this manner, community service appears, in terms of its legal nature, as a substitute form of execution of the fine penalty in the case of those persons who act in good faith, but are insolvent, and consent to the execution of the fine penalty in this way. Until the full performance of the community service obligation, this obligation may cease if the convicted person pays the amount of money corresponding to the days-fine still unexecuted or may be converted into deprivation of freedom by replacing the unexecuted days-fine into days in prison, in those cases in which the person convicted does not perform the community service under the conditions set by the court or commits a new offense.

The accessory penalty consists in the ban, during the period of execution of the custodial sentences, of the rights whose exercise was prohibited by the court as complementary penalty. The accessory penalty of the prohibition of the exercise of certain rights is executed from the moment when the conviction becomes final and definitive and until the principal custodial sentence has been served or deemed as served.

Complementary penalties are the prohibition of certain rights and military degradation.

The complementary penalty consisting in the prohibition of exercising certain rights means the ban to exercise, for a period of one to 5 years, of one or more of the following rights: the right to be elected in public authorities or any other public offices, the right to hold an office involving the exercise of state authority; the right of a stranger to be on Romanian territory; the right to vote; parental rights, the right to be a guardian or trustee; the right to hold the office, to practice the profession or craft or to engage in the activity which was used for committing the offense; the right to own, carry and use any type of weapon; the right to drive certain types of vehicles determined by the court; the right to leave the territory of Romania; the right to occupy an executive position within a public law legal person; the right to be in certain localities determined by the court; the right to be in certain places or at certain sporting, cultural or other public meeting events, established by the court; the right to communicate with the victim or the members of his/her family, with the people with whom the offense had been committed or with other people, established by the court, or to approach them; the right to approach the home, workplace, school or other places where the victim carries on social activities, under the conditions established by the court of justice.

The new Penal Code provides two new ways of individualisation of criminal penalties under non-custodial regimes.

For the offenses of reduced gravity, the court may order to waive the application of the penalty if the committed offense is of reduced gravity, taking into account the nature

and extent of the consequences, the means used, the manner and circumstances in which it was committed, the reason and the purpose aimed; the penalty provided by law for the committed offense is imprisonment not exceeding 5 years, and the offender does not have a prior conviction, with the exception of the offenses committed with negligence or those offenses which have been decriminalized or for which rehabilitation intervened or the term of rehabilitation had passed. In this case, it is sufficient to apply a warning, since the establishment, application or enforcement of a penalty would be likely to cause more harm than help in the recovery of the defendant.

One cannot order to waive the application of penalty if, for the same offender, one has already ordered the waiver of the application of penalty in the last 2 years preceding the committing of the offense for which the offender is being put on trial or if the offender had evaded trial or prosecution or had tried to block the establishment of the truth or of the identification and prosecution of the author or participants.

If, within 2 years from the final decision ordering the waiver of the application of penalty, it is found that the person against whom such measure was taken had committed, prior to the final and definitive judgment, another offense, for which a penalty was established just after the expiry of this term, the waiver of the application of penalty is annulled and one established the penalty for the offense which initially attracted the waiver of the application of the penalty, and then applying, as appropriate, the provisions regarding concurrent offenses, relapse into crime or intermediary plurality.

Another way of individualization of penalty in a non-custodial regime is the postponement of the application of the penalty.

The court may order the postponement of the application of penalty (conditional sentence), establishing a surveillance term, if the established penalty, including in the event of concurrent offenses, is the fine or imprisonment not exceeding 2 years; the offender has not previously been convicted to imprisonment, with the exception of the offenses committed with negligence or those offenses which have been decriminalized or for which rehabilitation intervened or the term of rehabilitation had passed; the offender has expressed his/her agreement to provide nonpaid community service work; in relation to the person of the offender, the behaviour demonstrated before committing the offense, the efforts made by the offender to remove or mitigate the consequences of the offense, as well as his/her possibilities of self-correction, the court may consider that the immediate application of a penalty is not necessary, but that the offender's behaviour must be supervised for a specified period of time.

One cannot order the postponement of the application of penalty if the penalty provided by law for the committed offense is of 7 years or more or if the offender evaded trial or prosecution or had tried to block the establishment of the truth or of the identification and prosecution of the author or participants.

The surveillance period is of 2 years and is calculated from the date the judgment ordering the postponement of the application of penalty becomes final and definitive.

Throughout the surveillance period, the person which was granted the postponement of the application of penalty must follow the surveillance measures and must carry out his/her incumbent obligations, under the conditions established by the court.

The surveillance of the execution of the obligations established by the court is performed by the probation service, which must notify the court in case there intervene reasons which justify either the modification of the obligations imposed by the court, or

the cessation of the performance of some of them; the supervised person does not comply with the surveillance measures or does not perform, under the established conditions, his/her incumbent obligations or the supervised person did not fulfill his/her civil obligations established by means of the judgment, no later than 3 months before the expiry of the surveillance term.

If, throughout the surveillance term, the supervised person, with bad faith, does not comply with the surveillance measures or does not perform the obligations imposed, the court will revoke the postponement and will order the application and enforcement of the penalty.

In the case in which, until the expiry of the surveillance term, the supervised person does not fully meet the civil obligations established by way of the judgment, the court will revoke the postponement and will order the application and enforcement of the penalty, unless the person proves that he/she was given absolutely no opportunity to fulfill them.

If, after the conditional sentence, the supervised person committed a new offense, with intent or with exceeded intent, discovered during the surveillance term, for which a conviction was adjourned, even after the expiry of this term, the court will revoke the conditional sentence – aka the postponement – and will order the application and enforcement of the penalty. The sentence penalty applied as a result of the revocation of the postponement and the penalty for the new offense are calculated according to the provisions regarding concurrent offenses.

If the subsequent offense is committed with negligence, the court may maintain or revoke the conditional sentence.

If, throughout the surveillance term, it is discovered that the supervised person had committed an offense until the adjudication of the final and definitive judgment deciding the conditional sentence, for which the court applied a prison sentence, even after the expiry of this term, the conditional sentence is annulled and the court will apply, according to circumstance, the provisions regarding concurrent offenses, relapse into crime or intermediary plurality.

The person who received a conditional sentence will no longer have to execute the penalty as well and is not subject to any disqualification, prohibition or incapacity which could result from the committed offense, provided he/she does not commit a new offense until the expiry of the surveillance term, the postponement of the application of penalty was not revoked and no cancellation cause has been discovered.

The postponement of the application of penalty – the conditional sentence – has no effects upon the execution of the safety measures and of the civil obligations set out in the judgment.

Another category of criminal sanctions regulated distinctly from penalties are the safety measures.

Through the proposed regulation, the legislator aimed to strengthen the mainly preventive character of these criminal law sanctions which may be applied only if an offender committed an offense provided by the criminal law and unjustified, an offense which reveals the existence of a state of danger. It is however not necessary that this deed be also imputable, which means that the safety measures can be applied also in the presence of a cause of non-imputability (*e.g.* irresponsibility), but not in the presence of a justifying cause.

The safety measures can have a medical nature (the obligation to undergo medical treatment and hospital care), deprivation of certain rights (prohibition to exercise

certain functions or professions) and safety measures with a patrimonial nature (special confiscation and extended confiscation).

The safety measure of the prohibition to exercise certain functions or professions differs from the complimentary penalty with the same content in that the former is determined by certain inability, lack of preparation or other circumstances which make the offender unfit to occupy a certain position, to exercise a certain profession or trade or to carry out another activity and one can take the measure of prohibiting the exercise of the right to occupy that function or to exercise that profession, trade or activity, whilst the complementary penalty is determined by the fact that the respective function or profession was used by the offender in committing the respective offense.

The special confiscation regards the goods by committing the deed provided by the criminal law; the goods which were used, in any way, or intended to be used to commit an offense under the criminal law, if they belong to the offender or if, belonging to another person, the latter was aware of the purpose of their use; the goods used, immediately after committing the offense, to ensure the escape of the perpetrator or the keeping of the gain or of the product obtained, if they belong to the offender or if, belonging to another person, the latter was aware of the purpose of their use; the goods which were offered to determine the perpetration of an offense provided by the criminal law or to reward the perpetrator; the goods acquired through the perpetration of the deed provided by criminal law, if they are not returned to the injured person and to the extent to which they do not serve for his/her compensation and the goods whose possession is prohibited by criminal law.

By means of the transposition of the Framework Decision no. 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, the measure of extended confiscation has been regulated for the first time in our legislation.

The legislator decided to submit to the extended confiscation goods, other than those subject to the special confiscation, in case the person is convicted for committing serious offenses, expressly provided by the law (organized crime, corruption, drug or human trafficking etc.), if the deed is likely to procure for him/her a material gain and the penalty provided by law is imprisonment of 4 years or more.

The extended confiscation is ordered if the value of the goods acquired by the convicted person, within a period of 5 years before and, if appropriate, after the time of the offense, until the date of issuing the document instituting the proceedings, clearly exceeds the his/her revenues, lawfully obtained, and the court is convinced that the respective goods derive from criminal activities having the nature of those provided by law. The confiscation may not exceed the value of the goods thus acquired, which exceeds the level of the lawful revenues of the convicted person.

Title V of the General Part is reserved for regulations regarding the minors.

In the Romanian criminal law, the minor under the age of 14 is not criminally liable, the minor who is aged between 14 and 16 is criminally liable only if it is proved that he/she had committed the act with discernment, and the minor who has attained the age of 16 is criminally liable according to the law.

The major change brought by the new Criminal Code in this respect is the complete renunciation of the penalties applicable to the minors who are criminally liable, in favour of the educational measures, similarly to other European legislations.

The Criminal Code sets out, as a rule, the application, in the case of minors, of non-custodial, educational measures; the custodial measures represent the exception

and are reserved for those hypotheses of serious offenses or for minors who have committed multiple offenses.

The non-custodial educational measures are, in ascending order of their gravity: civic training, surveillance, weekend confinement and daily assistance.

The custodial educational measures are: confinement in an educational center for a period of one to 3 years and, respectively, confinement in a detention center for a period of 2 to 5 years or, in exceptional cases, from 5 to 15 years. The measure of confinement in a detention center is ordered for a period of 5 to 15 years only in the event of committing a very serious offense, for which the law provides life imprisonment or imprisonment for at least 20 years.

Title VI of the General Part is devoted to the criminal liability of legal persons.

In regulating the criminal liability of the legal person, the legislator maintained the direct liability model of the legal person. Accordingly, the criminal liability of the legal person can be brought about by any natural person acting in achieving the object of activity or in the interest or on behalf of the legal person.

The state and public authorities, as well as public institutions, are not criminally liable, with the remark that the latter are not criminally liable only in the case of the offenses committed in the exercise of an activity which cannot be the object of the private domain.

The criminal liability of the legal person does not exclude the criminal liability of the natural person who contributed to the perpetration of the same deed.

The principal penalty applicable to the legal person is the fine, and the complementary penalties are as follows: the dissolution of the legal person, the suspension of the activity or of one of the activities of the legal person for a period from 3 months to 3 years, the closure of some work sites of the legal person for a period from 3 months to 3 years, the prohibition to participate in public procurement procedures for a period of one to 3 years, the placement under judicial supervision and the posting or publication of the conviction.

The amount of the fine is determined through the day-fine system. The amount corresponding to a day-fine, ranging between 100 and 5.000 lei, is multiplied by the number of days-fine, ranging between 30 and 600 days.

Since the complementary penalties consist of the dissolution of the legal person or the suspension of the activity or of one of the activities of the legal person for a period from 3 months to 3 years, these penalties cannot be applied to public institutions, political parties, trade unions, employers' organizations and religious or national minorities organizations, constituted according to the law.

The causes which eliminate criminal liability are: pre-conviction amnesty, prescription of criminal liability, lack of prior criminal complaint and the withdrawal of the prior criminal complaint, in the case of the offenses for which the exercise of the criminal action is conditioned by such a complaint, and the reconciliation of the parties in the case of the offenses for which the law expressly provides it.

The causes which eliminate or modify the execution of penalty are: post-conviction amnesty, pardon and prescription of the execution of penalty.

Prescription does not exclude criminal liability or the execution of the penalty for the offenses of genocide, crimes against humanity and war crimes, regardless of the moment when they were committed, as well as for the offenses of homicide and other intentional crimes followed by the death of the victim.

Rehabilitation ceases the disqualifications and prohibitions, as well as the incapacities arising from conviction. Rehabilitation does not result in the obligation of reintegration in the position from which the convict was removed following the conviction or of restoring the lost military rank. Rehabilitation has no effects on the safety measures.

The Special Part of the Penal Code is structured into twelve titles, as follows: Offenses against the person, Offenses against property, Offenses regarding state authority and borders, Offenses against justice, Offenses of corruption and offenses committed on the job, Offenses against public security, Offenses which affect relationships regarding social life, Electoral offenses, Offenses against national security, Offenses against the fighting capacity of the armed forces and Crimes of genocide, crimes against humanity and war crimes.

As concerns the systematization of the Special Part of the code, the legislator has abandoned the structure of the previous Penal Codes, regulating first of all the offenses affecting the person and their rights, and only afterwards those offenses which affect the state's attributes, an outlook which reflects the importance paid to the values related to the person and their rights and freedoms in the hierarchy of the values which enjoy protection, including through criminal means, hierarchy which can be found in other European Penal Codes as well.

As regards the offenses against life, the legislator expressly regulated the offense of *murder at the request of the victim*, as a mitigating form of homicide, thus not only returning to the tradition of our law from the interwar period, but also to the tradition of most European codes.

A separate chapter has been devoted to those offenses meant to protects the foetus against all aggressions, by incriminating, along the offense of illegal abortion, provoked outside health units or by non-specialized personnel, also the offense of injury against the foetus, meant to ensure the protection of future life, for the period between the moment of the start of the birth process, at which point one can no longer talk about abortion, and the moment of the conclusion of this process, when we already are in the presence of a person, which can be a passive subject to the offenses of bodily injury or murder.

The legislator systematized, within the offenses against the person, the offenses of trafficking and exploitation of vulnerable persons, which were, up until now, incriminated in a special law. Therefore, in addition to human trafficking, child and migrants trafficking, following the ratification by Romania of the Council of Europe's Convention on Action against Trafficking in Human Beings, a new incrimination has been introduced: the use of the services covered by the exploitation of trafficked persons.

The regime sanctioning family violence was aggravated, and, amongst the offenses against sexual freedom and integrity, the legislator introduced the sexual harassment committed by repeated acts and which creates, for the victim, an intimidating or humiliating situation.

The rules incriminating the deed against property were grouped in four chapters, given the factual situations in which the goods might find themselves as patrimonial entities, as well as the character or nature of the illegal actions through which these factual situations might be changed. Thus, in addition to the offenses of theft and robbery, the legislator chose to incriminate also the deeds against property which are committed with infringement of trust, category in which there have been included, apart

from the breach of trust, fraudulent management, appropriation of the found good and fraud, which had existed in the previous codes as well, new deeds have been added, whose illicit actions are based on an infringement of trust, such as the breach of trust by defrauding creditors, fraud on insurance, misappropriation of public tenders and patrimonial exploitation of a vulnerable person.

The regulation of the offenses perverting the course of justice knows some major changes, which aim to ensure the legality, independence, impartiality and firmness of the achievement of justice, by criminally punishing those offenses liable to seriously affect, ignore or undermine the authority of justice.

The legislator has incriminated, as new deeds of obstructing the course of justice: the revenge for the help offered to justice, pressures on justice, compromise of the interests of justice, contempt of court, judicial outrage, unfair assistance and representation, and the offense of money laundering, incriminated by means of a special law, was included in this category.

The offenses of corruption and the offenses committed on the job are structured into three chapters: the first chapter contains the corruption offenses, the second chapter, the offenses committed on the job, and the third chapter is devoted to those offenses which affect the financial interests of the European Communities.

The code provides that the provisions contained in the chapter "corruption offenses" are applied, correspondingly, to the acts of corruption committed by foreign officials or in connection with their work, and, following the ratification by Romania of the Additional Protocol to the Criminal Law Convention of the Council Europe regarding corruption, the above mentioned provisions were completed and extended to also include the acts of giving and taking bribery committed by persons involved in the settlement of disputes by means of national or international arbitration.

Within the offenses committed on the job, the legislator incriminated the act of misuse of one's position for the purpose of sex, a new indictment, having as starting point the offense of sexual harassment in the current regulation, and contains the so-called vertical harassment, by abuse of power, as well as new hypotheses of incrimination.

In the category of the offenses against public order, the legislator has redefined the content of the offense of organized criminal group, incriminated until now by Law no. 39/2003 regarding the prevention and fight against organized crime.

Article 2 letter (a) of the United Nations Convention against Transnational Organized Crime defines the organized criminal group as "a structured group of three or more persons, existing for a certain period and act in concert with the aim of committing one or more serious crimes or offenses under this Convention, to obtain, directly or indirectly, a financial or other material benefit".

The organized criminal group was identically defined by Article 2 para. (1) of Law no. 39/2003 which, in addition, added the following: "the group formed occasionally to the purpose of immediately committing one or several offenses and which has no continuity or definite structure or pre-established roles for its members inside the group does not constitute an organized criminal group".

The current Penal Code defines the organized criminal group as "a structured group of three or more persons, constituted for a certain period of time and for acting in a coordinated manner with the aim of committing one or more offenses".

As one may notice, in the Romanian criminal law, the definition of the organized criminal groups has passed from the forms of transnational organized crime to the

forms of domestic, national crime in order to replace criminal associations, which has been criticized by some authors because it would mean, in fact, a distortion of the meanings and purposes of the incrimination of the serious forms of organized crime, through the trivialisation of evil.

The crimes of genocide, crimes against humanity and war crimes were redefined in accordance with the Statute of the International Criminal Court Statute, following its ratification by Romania by means of Law no. 111/2002.

Regarding the sanctioning regime of offenses, the new legislation has started from the need for readjustment within normal limits of the punitive treatment; the practice of the last decade has shown that an exaggerate increase in the limits of penalties is not an efficient solution in the fight against crime, and therefore, in general, the special limits of the penalties provided in the new Code are usually lower than in the previous code, the new Penal Code constituting, thus, a more favourable law.

The correlation of the provisions of the Penal Code with many of the European Penal Codes helps to enhance the international cooperation with the EU countries.

Although some provisions from the new Penal Code aroused contradictory discussions within the legal literature, it constitutes a modern code, connected to European.