ASPECTS REGARDING THE INDIVIDUALIZATION OF PUNISHMENTS FOLLOWING THE AMENDMENT OF THE CRIMINAL CODE

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Abstract

The term of "punishment individualization" is known since 1898, because of the publication of Raymond Saleilles's work entitled "L'individualisation de la peine". The definition of the concept of individualization was outlined by the legislator through juridical technique, as: when establishing and applying punishments as tools for adapting the convict to the penitentiary environment. The punishment individualization is a complex operation that is carried out both by the legislator (the legal individualization, realized at the moment of the elaboration of the law, by establishing the general framework of punishments, the special limits for each offense and the framework within which judicial individualization and administrative individualization may intervene), by the court (juridical individualization), as well as during the execution of the sentence (administrative individualization, for example: establishing the regime of execution of the prison sentence, granting conditional release, changing the content of the obligations imposed in the context of postponing the application of the sentence or suspending the execution of the sentence under supervision).

Keywords: *punishment, crime, punishment individualization, establishing punishment, application of punishment, postponement of application of punishment, suspension of execution of sentence under supervision.*

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1. Introductory aspects

Referring to the definition of punishment, as well as the purpose of punishments, we can find that it is missing from the New Criminal Code, unlike the previous Criminal Code in which a definition of punishment was offered in *art. 53, and in art. 52 para. (1)* the purpose of punishment.

In the stated reasons of the NCC, it was mentioned that it is exclusively the privilege of dogma to define the punishment and to determine its purpose, but it does not show an equal point of view, thus realising significant theories showing that the punishment is a fair payment in relation to the act committed, as well as theories to prevent the commission of other crimes.

As the High Court of Review and Justice points out in the Guide for the individualization of punishments on corruption, in order to establish a fair practice in the field of punishments, in the process of judicial individualization of punishments, it is appropriate to take into account the determination of the purpose of the punishment, the establishment and analysis of the criteria for judicial individualization of the sentence, as well as an assessment of the circumstances in which the act was committed.

The purpose of the work is to highlight the significant changes introduced by the New Criminal Code regarding punishments, as well as the importance of individualizing the punishments applied to people who have committed crimes.

So, I will start by showing the purpose of the punishment, the categories of punishments, as well as the criteria of the individualization of the punishment, because of which I will proceed with conclusions.

For the punishment to achieve its purpose it is necessary to be adapted both to the severity of the act and to the dangerousness of the offender. This is where the operation to individualize the punishment comes in, an operation that has a fundamental importance. Thus, if the method of punishment is too light, then the convicted person will feel encouraged to commit new crimes later. Also, the other members of the society, seeing the lack of reaction of the state authorities, will also be encouraged to commit such illicit acts. On the other hand, the application of a too harsh punishment will lead to the isolation of the convicted person, to the annulment of any chance of social reintegration. Once the sentence is given, there is a chance that he will feel stigmatised and commit new crimes (often more serious crimes than the one for which he was originally convicted).

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2. Categories of punishments

2.1. Punishments applicable to the natural person

2.1.1. Life imprisonment

There are a few changes made by the NCC with relevance in practice. Thus, according to *art. 57 NCP, "*If, *on the date of the conviction, the defendant has reached the age of 65 years, instead of life imprisonment is applied the prison sentence for 30 years and the penalty of prohibiting the exercise of certain rights for its maximum duration".*

The changes made by the NCC are the age of 65 years, compared to 60 years, as provided by C. C 1969, and the prison sentence of 30 years, compared to 25 years, as ordered by the previous regulation.

Also, according to the provisions of *art. 58 NCC,* it was established that it is no longer mandatory to replace life imprisonment with a sentence of imprisonment for 30 years when the detainee reaches the age of 65 during detention.

The text of the law sets out the conditions for ordering the replacement of life imprisonment by a prison sentence. One of them consists in the full fulfillment of the civil obligations established by the conviction.

In *C.C. 1969,* according to the provisions of art. *81,* one of the conditions for ordering the conditional suspension of the sentence consisted in repairing the damage caused by committing the crime. However, the *Constitutional Court* found that the text of the law was unconstitutional, establishing discrimination based on wealth. However, the text of the NCC makes it clear that the civil obligations established by the sentencing decision must be fulfilled in full, "unless it *proves that it had no possibility to fulfill them*".

The European Court of Human Rights (ECHR) has held that if the criminal law of a state did not provide even in the abstract that a person could benefit from the replacement of life imprisonment by a prison sentence, it would be a violation of the provisions of the Convention.

The doctrine noted a difference in treatment, considered discriminatory, between those who reach the age of 65 during the trial and those serving their sentence who reach the age of 65 after being definitively convicted.

According to the provisions of art. 57 NCC, those who reach the age of 65 during the trial will be compulsorily sentenced to imprisonment for 30 years if the court turns to the penalty of life imprisonment. The penalty of life imprisonment cannot be applied in any form to those who have reached the age of 65 during the trial. For those who reach the age of 65 possibly one day after the final decision of the conviction, it remains at the possibility of replacing life imprisonment with imprisonment for 30 years.

Another issue that arises in relation to the sentence of life imprisonment is whether additional punishments can be applied in the case of life imprisonment or not, which is also debatable under the previous Criminal Code. In solving this problem, two opinions emerged: in one opinion it was argued that the complementary punishment should also be applied, as the law provided for the possibility for the person sentenced to life imprisonment to be released, and in another opinion, it was considered that the punishment of life imprisonment could not bring the complementary punishment of the prohibition of certain rights.

Judicial practice has embraced both opinions.

Under the NCC, I believe that it is not possible to apply the complementary penalty of the prohibition of certain rights to life imprisonment, even if the text expressly provides for this (*Art. 67 para. (1) NCC:* "The complementary punishment of the prohibition of the exercise of certain rights may be applied if the *main punishment established is imprisonment or a penalty the court finds that, given the nature and gravity of the crime, the circumstances of the case and the person of the offender, this penalty is necessary"*).

Also, under the punishment of life imprisonment, the court may apply accessory punishments

which involve the prohibition of the exercise of certain rights and which could have been prohibited as a complementary punishment. If the person sentenced to life imprisonment will be released on parole, if he is under that term of supervision of parole, he will still be considered in the execution of the sentence, so that he will continue to execute the accessory sentences until the end of the probationary term of 10 years, provided for in the NCC. The NCC provides, in *article 39 para. (2)* , a special case of application of the life sentence: "When *several prison sentences have been established, if by adding to the highest penalty the increase of one third of the total of the other established prison sentences would exceed by 10 years or more the general maximum of the prison sentence, and for at least one of the concurrent crime the penalty provided for by law is imprisonment of 20 years or more, the sentence of life imprisonment may be applied".* The text raises questions of predictability of the law, and one of the principles of criminal law is that of the legality of punishment. However, it was considered that the text does not violate the predictability and legality of the penalty because the legality of the penalty supposes that it be applied based on a legal provision.

The application of the text is also not mandatory, leaving it to the discretion of the court to apply the sentence of life imprisonment or imprisonment for 30 years (the general maximum of 30 years).

2.1.2. Imprisonment

There are no significant differences introduced by the NCC. An aspect that must be pointed out is the one from art. 72 NCC, regarding the calculation of the duration of preventive measures of deprivation of liberty during the imprisonment.

2.1.3. Fine

A new enforcement system was introduced through the PCN, namely that of fine-days. According to the provisions of *art. 61 para. (2) NCC,* "The amount of the fine shall be established in the system of fine-days. The amount for one fine-day ranges from 10 RON and 500 RON and will be multiplied by the number of fine-days, which ranges from 30 and 400."

Therefore, there are two coordinates for determining the penalty of the fine: the number of fine-days (between 10 and 500) and the amount of the amount provided for each fine-day.

The criteria on the basis of which the two coordinates are established are different: the number of fine-days is established according to the general criteria for individualization of the penalty *(art. 74 NCC),* and the amount for each day-fine is established taking into account the criteria of *art. 61 paragraph (3) NCC: "A court shall establish the number of fine-days according to the general criteria for customization of sentencing. The amount that corresponds to one fine-day shall be calculated based on the financial status of the convicted defendant and their legal obligations towards persons they are supporting".* The question arises as to whether the fine-days system institutes discrimination based on wealth. A punishment and the way in which it achieves its purpose is also related to the way it is felt by the one to whom it is applied.

For the penalty of the fine to be felt in a similar way by all those to whom it is imposed, the criterion of the material situation of the convicted person must also be considered.

The special limits of the fine are different, as the punishment is provided for alone, alternatively with the prison sentence of up to 2 years or alternatively with the prison sentence of over 2 years, being between:

a) 60 to 180 fine-days, when the law stipulates only a penalty by fine for that offense;

b) 120 to 240 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of no more than 2 years;

c) 180 to 300 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of more than 2 years.

The above-mentioned limits shall also be considered where the penalty of the fine is provided for in special laws. There could be problems in recognising foreign judgments in terms of pecuniary

sanctions, turning that fine into our domestic law system. According to Law nr. No 302/2004, are treated in the same way as pecuniary sanctions and legal costs.

In the case of applications for recognition of foreign decisions imposing the pecuniary penalty, the court must distinguish between the legal costs and the penalty of the fine imposed in the foreign state that it recognises, because in the case of the penalty of the fine, the system of fine days must be applied, and in the case of court costs the pecuniary penalty must be recognised as applied in our domestic law.

According to the provisions of *art. 61 para. (5) NCC, "If the committed offense was intended to provide a material gain, and the penalty stipulated by law is only a fine or the court chooses to only sentence to that penalty, the special thresholds for fine-days can be increased by one-third".*

A similar case is regulated in *Article 62 para. (1) NCC, which provides that, "If the committed offense was intended to provide a material gain, the penalty by imprisonment can be accompanied by a penalty by fine".* In both cases, the distinction is made exclusively according to the motive of the commission of the crime.

Thus, reservations have been expressed in the doctrine regarding the reliability of these texts, considering that in most crimes the aim is to obtain a patrimonial benefit.

So, the text would be applicable if there are also patrimonial implications (for example, the crime of murder, the crime of hitting) in the commission of offenses which do not normally involve the obtaining of a property benefit.

In the case *of Article 62 of the NCC,* the amount of the fine is set differently from the situation regulated by Article *61,* since it does not consider the amount of the prison sentence provided for by law, but the penalty set by the court for the offence committed [*Art. 62 para. (2) NCC].* The criteria according to which the court will focus on the application of the fine are different - art. 61 para. 3 NCP.

In the case of *Article 62 of the PCN, in para. (3) it is provided that "In establishing the amount of one fine-day consideration shall be given to the amount of material gain that was obtained or desired".*

Therefore, wealth is no longer a criterion in determining the amount of the fine, nor the legal obligations of the convicted person.

In case of mitigation causes (e.g., attempt) or aggravation causes (e.g., concurrence of offences), the limits of the fine penalty are reduced/increased (only the number of fine-days, not the amounts for each fine-day). The NCC regulates in its content mechanisms to ensure the execution of the fine penalty.

Thus, according to the provisions of *art. 63 para. (1), "If the convicted defendant fails to pay their fine, in ill-faith, in whole or in part, the number of fine-days shall be replaced by the same number of days of imprisonment".*

In the previous regulation, the fine was individualized again. Also, the penalty of the fine was replaced by the punishment of imprisonment only if it was provided alternatively with the punishment of imprisonment, and not if it was provided exclusively by the punishment of the fine for the crime committed. The question arises as to how to establish bad faith, because the NCC does not regulate clear criteria in this regard. As the problem also existed under the previous regulation, the practice under the previous Criminal Code could continue to be applied. Another practical issue arising from the determination of the penalty of the fine concerns the obligation to establish the material situation of the defendant.

The provisions of the NCC do not regulate who has this obligation, namely the prosecutor or the court. Most likely, the prosecutor will administer evidence to establish the material situation of the defendant, considering the much-diminished role of the judge in the trial phase, according to the provisions of the NCCP.

Thus, only in the subsidiary, the judge can order the administration of evidence ex officio. Article 64 NCP regulates another way of enforcing the penalty of a fine, namely by performing unpaid work for the benefit of the community.

If the convict agrees to serve the fine for community service, the fine will be replaced by

community service (one day-fine corresponds to one day of community service). If he does not agree to this replacement, the possibility remains to replace the fine with imprisonment. This right to choose is enshrined in most international conventions, which also provide for the obligation to obtain the convict's agreement to perform unpaid work for the benefit of the community.

Also, if the convicted person commits a new offense discovered before the full execution of the community service obligation, the non-executed fine days for community service work shall be replaced by an appropriate number of days in prison and the non-executed fine days for work. for the benefit of the community on the date of final conviction for the new offense, replaced by imprisonment, shall be added to the sentence for the new offense.

2.1.4. Accessory punishment

As regards the application of accessory sentences, under *the C.P. 1969*, the HCCJ issued a decision on appeal in the interest of the law, holding that it was always necessary for the judge to assess certain rights as an accessory punishment, which could not be applied de law. Under *the NCC, the judge*, each time, will assess whether he will prohibit certain rights as an accessory punishment or not. The rights that may be prohibited as an accessory punishment are those provided for in *Art. 66 NCC,* which regulates complementary punishments.

In the original form of the NCP, the penalty of life imprisonment provided for the legal prohibition of certain rights, including parental rights. According to the case law of the ECHR, the legal prohibition of parental rights without considering the major reason of the best interests of the child is contrary to the Convention, so that amendments have been made by the law implementing the NCC. Thus, according to the provisions of *art. 65 para. (2) NCC,* "*In the case of life imprisonment the additional penalty consists of the court banning the exercise of the rights stipulated in Art. 66 par. (1) lett. a) - o) or a number of those*". It follows from the wording of the text that it is mandatory to prohibit some of these rights. In the case of life imprisonment, if it was ordered as an accessory punishment the prohibition of the foreigner's right to be on the territory of Romania (*art. 66 para. (1) lett. c) NCC],* it shall be implemented immediately after the release of the person in detention for life and the execution of the main sentence shall no longer be expected. This also explains the difference between Article *66 para. (1) point .c) and Article 65 para. (4).*

In relation to the provisions of the NCC, the question arises as to what happens to the accessory punishment in the case of suspension of the execution of the sentence under supervision, in the absence of a provision like *art. 71 para. (5) C.P. 1969*. If in the case of suspension of the execution of the sentence under supervision, the court applied a complementary punishment that also implies the prohibition of the right as an accessory punishment, we consider that the complementary punishment will be executed immediately after the final decision becomes final, which means that the execution of the accessory sentence, following the fate of the main sentence, will be suspended under supervision.

2.1.5. Complementary punishments

Additional penalties may also be imposed in addition to the fine and regardless of the amount of the main penalty. The complementary punishments are in the NCC (art. 66 NCC) much more numerous than in the old regulation, the security measures provided by CC 1969 being introduced in the category of complementary punishments in the NCC (for example, the complementary punishment consisting in the prohibition of the foreigner's right to be on the territory of Romania was, according to CC 1969, the security measure of expulsion). Also, in the NCC were publication co-financed by Switzerland through the Swiss-Romanian Cooperation Program for the reduction of economic and social disparities within the enlarged European Union 41 introduced in the category of complementary punishments the prohibition of the right to be in certain localities established by the court *(art. 66 para. (1) lit. l)]* or the right to approach the dwelling, the place of work, school, or other places where the victim carries out social activities, under the conditions established by the court

[letter o)], in the previous regulation they are provided, in a similar form, in the category of safety measures.

According to the provisions of *art. 2 lit. a) of GEO no. 194/2002* on the regime of foreigners in Romania, *"foreigner"* means *"a person who does not have Romanian citizenship, the citizenship of another Member State of the European Union or the European Economic Area or the citizenship of the Swiss Confederation"*. The cited text of the law raises a problem regarding the right of the alien to be on the territory of Romania in case the suspension of the execution of the sentence under supervision has been ordered. Thus, the question arises whether this definition of foreigner remains valid in terms of the notion of foreigner in the NCC or the notion of NCC is interpreted autonomously, any person who does not have Romanian citizenship being considered a foreigner. It is also necessary to clarify certain aspects of parental rights, the right to possess, carry and use any category of weapon, the right to drive certain categories of vehicle, in the sense that, if the prohibition of such rights is ordered as a complementary punishment , the question arises whether it is mandatory for the offense committed to be related to these rights (for example, parental rights can be denied only to persons who have children or there must be a link between possession, carrying or use of a weapon and the offense committed in order to provides for the additional penalty in *art. 66 lett. h).* Similarly, there is the problem regarding the connection between the used vehicle and the crime committed for the one from *art. 66 lett. i)*. The doctrine expressed the opinion that the prohibition of these rights must be related to the crime committed. However, we believe that this connection does not always have to exist (for example, if the crime committed is of a high degree of danger, a ban on the right to possess, carry and use any category of weapon may be ordered as a complementary punishment, even if at the time of the crime a weapon was used).

3. Criteria for individualizing the punishment

Several amendments were introduced by the NCC, in the sense that the provisions of the general part, the limits of the special part, the circumstances that mitigate or aggravate the criminal liability in C.C. 1969 were no longer provided as criteria for individualizing the punishment but it was considered that these are non-specific criteria for individualization of the sentence, while the general criteria for individualization should include only the criteria regarding the deed and the person of the defendant, which will be taken into account by the judge when determining the amount of the sentence provided by law.

Article 74 NCC lists the general criteria for the individualization of the sentence, in essence the criteria relating to the act and the person of the defendant. During the drafting of the NCC, there were discussions that the individualization of the sentence should be done after the court has established the guilt or innocence of the defendant, and regarding the NCPC, a two-stage deliberation procedure was also discussed, and there is a trend in this regard in Western legal systems as well. An example of the application of the two-stage sentence is the institution of postponement of the sentence.

According to the provisions of the NCC, the individualization of the punishment is an exclusive attribute of the judge. The opinion was expressed that it is important that these criteria for individualizing the punishment to be discussed by the parties, because it contributes to the achievement of the educational purpose of the criminal trial and the application of the punishment.

Mitigating and aggravating circumstances. In essence, the legal mitigating circumstances are the same as in *C.C. 1969*, with one exception, regulated *in art. 75 lit. d) NCC: "covering all the material damage caused by an offense, during criminal investigation or trial, until the first hearing, if the offender has not benefited from this circumstance within 5 years prior to committing the crime."*, which was introduced by the law implementing it. The reason for regulating this legal mitigating circumstance was to determine the defendants to cover the damage caused by committing the deed during the criminal investigation or during the trial until the first term. The text of the law also regulates a series of situations that represent exceptions to the application of this mitigating legal circumstance: offense against the person, aggravated theft, robbery, piracy, fraud committed through

computer systems and electronic means of payment, assault, judicial assault, abusive behavior, offenses against public safety, offenses against public health, offenses against freedom of religion and respect due to the deceased, against national security, against the fighting capacity of the armed forces, crime of genocide, crimes against humanity and war crimes, offenses against Romanian state border, offenses against the law on preventing and combating terrorism, corruption offenses, offenses assimilated to corruption offenses, or against the financial interests of the European Union, violation of regulations concerning explosive, nuclear and radioactive materials, drug offenses, drug precursors offenses, money laundering offenses, offenses against civil aviation activities and which might endanger flight safety and aviation security, offenses against witness protection, offenses against bans on organizations and symbols with fascist, racist and xenophobic character and against the promotion of worship of persons guilty of crimes against peace and humanity, offenses relating to trafficking in human organs, tissues or cells, offenses relating to preventing and combating pornography and relating to adoption rules.

Paragraph 2 of Article 75 of the NCC regulates judicial mitigating circumstances. Thus, the following situations may represent judicial mitigating circumstances:

a) efforts made by an offender to eliminate or reduce the consequences of their offense;

b) circumstances relating to the committed offense, which reduce the seriousness of the offense or the threat posed by the offender.

About aggravating circumstances, many more aggravating circumstances have been introduced by the NCC compared to the previous regulation.

Thus, some aggravating circumstantial elements under the rule of C.C 1969 (for example, the commission of three or more persons together by an act) are general aggravating circumstances in the NCC regulation, with some exceptions. The NCC introduced as new aggravating circumstances the commission of the crime by subjecting the victim to degrading treatment, there are discussions about it, respectively whether the degrading treatment must be committed with direct intent or is sufficient and an indirect intention to retain this aggravating legal circumstance. In general, the idea of a direct intention to subject the victim to degrading treatment or cruelty was used to retain the circumstance.

As regards the competition between causes of aggravation or mitigation, according to the provisions of Article 79 para. (3) NCC, *" When one or more stipulations are applicable to one offense that have the effect of reducing a penalty and one or more stipulations are applicable that have the effect of increasing a penalty, the special threshold of the penalty stipulated by law for that offense shall be reduced according to par. (1), after which the resulting penalty shall be increased according to par. (2)."*

The establishment of the sentence means the operation after which the court determines in concrete terms the sentence that the defendant would execute. The court will choose the type of punishment (when the law provides for alternative punishments or there is the possibility of joining the prison sentence of the fine) and its duration or amount.[2]

At this stage, the court also has the possibility, if it considers that it is not necessary to establish any punishment, to order the waiver of the punishment (a waiver of the imposition of a punishment). At the stage of individualizing the application of the sentence, the court examines whether, in relation to all the circumstances regarding the gravity of the deed and the danger of the defendant, it is necessary to postpone the application of the sentence, or it is necessary to effectively apply the previously established sentence.

In the last stage, the court decides whether the sentence applied is to be executed or whether this execution will be suspended under supervision. Given that only the execution of the prison sentence can be suspended under supervision, there can be no question of an effective examination at this stage, if the sentence applied is only a fine or life imprisonment. In these situations, the court will be obliged to order the execution of the previously established and applied sentences. In these situations, the court will be obliged to order the execution of the previously established and applied

[2] Ionuț Borlan, *Amanarea aplicarii pedepsei in teoria si practica dreptului penal*, Universul Juridic Publishing House, Bucharest, 2017, p. 16.

punishments.

In the New Criminal Code, the legislator regulated two new institutions, namely **the waiver of the sentence and the postponement of the sentence**, and the legal regime of the suspension of the execution of the sentence under supervision has undergone important changes. The new regulation did not take over the institution of conditional suspension of the sentence and the execution of the sentence at work. The legislator aimed, at least at a theoretical level, to create mechanisms capable of allowing the correction and social reintegration of persons who have committed minor crimes and for whom the execution of the sentence in detention would contravene the role and purpose of the sentence.

The waiver of the sentence is a means of judicial individualization of the sentence, representing the prerogative conferred by law on the court to waive the imposition of a sentence on the defendant, if he considers that his social reintegration and restoration of order disturbed by the commission of the crime can be achieved by his warning.[3]

As a result of the waiver of the application of the sentence, the court which solves the case no longer sets any punishment for the defendant. Also, no additional penalties or accessories can be applied. *According to art. 81 C.pen*. when giving the waiver of the application of the sentence, the court applies a warning to the offender. The warning consists in presenting the factual reasons that determined the renunciation of the application of the punishment and the warning of the offender on his future conduct and the consequences to which he exposes himself if he commits more crimes. The person to whom the punishment was given to be waived is not subject to any disfall, prohibition or incapacity.

The annulment of the renunciation of the application of the punishment occurs if within 2 years from the final date of the decision by which the renunciation of the application of the punishment was ordered, it is discovered that the person against whom this measure was taken had committed before the decision became final another offence, for which he was established a punishment even after the expiry of this term. In case of cancellation of the waiver, the punishment for the crime that initially led to the waiver of the punishment shall be established, then applying the provisions regarding the competition of offenses, recidivism, or intermediate plurality.

Postponement of the application of the punishment is a means of judicial individualization of the punishment, located in the stage of judicial individualization of the application of the punishment. The court called to determine the social reaction required, in proportion to the gravity of the crime and the person with the defendant, considers that the mere imposition of the sentence, accompanied by a set of obligations and supervision measures, is sufficient to achieve the purpose of the sentence, without the need for conviction or effective execution of the sentence.

The person who has been ordered to postpone the application of the sentence is subject to strict supervision for a period of 2 years.

Revocation of the postponement of the sentence is the sanction that occurs if the supervised person does not behave properly during the term of supervision.

Considering that the postponement of the application of the sentence was ordered precisely on the basis of the court's confidence in the defendant's possibilities of redressing without a sentence being applied to him, the simple establishment of it, accompanied by a set of supervisory measures, as a warning is sufficient, it is natural that when it is observed that the person concerned does not justify this measure by his / her conduct, the postponement will be reversed.

The effects of the postponement of the application of the punishment are achieved at the moment of fulfilling the supervision term. According to art. 90 para. (1) NCC "*A defendant who has been granted a postponement of penalty enforcement shall not be subject to serving the penalty or to any restriction of rights, ban or incapacity that might devolve from the offense, unless they have committed a new offense before the expiry of the probation period, postponement has not been*

[3] In the same sense Rîșniță Alexandru, Curt Ioana, *Renunțarea la aplicarea pedepsei. Amânarea aplicării pedepsei*, Universul Juridic Publishing House, Bucharest, 2014, p. 21; Udroiu Mihail, *Drept penal. Partea generală. Noul Cod Penal,* C.H. Beck Publishing House, Bucharest, 2015, p. 247.

revoked and no cause for nullification has occurred."[4]

Suspension of service of a sentence under supervision is the instrument under which, if the court considers that for the social reintegration of the person who committed a crime and for the compliance of the purpose of the sentence no effective execution of the sentence is imposed, will order its suspension for a certain period in which will be analyze the conduct of the convicted person. If the convicted person proves at the end of this period that he has reintegrated into society, the sentence will be considered executed. If the person concerned does not comply with the established obligations, or commits a new offense, the suspension will be revoked, and the sentence will be executed in a state of detention.

The revocation of suspension of sentence enforcement under supervision is regulated in art. 96 of the Criminal Code. It *"represents the sanction that occurs if the convicted person has a behavior that proves that he did not correct himself and that his re-education can be achieved only through the effective execution of the sentence."* [5] The current Criminal Code provides that revocation of suspension intervenes in four cases: *if the convicted person does not re-comply with the measures or obligations established by the court, if he does not fully fulfill the civil obligations by decision, if during the term of supervision the convicted person committed a new offense, discovered until the deadline and if the sentence of the fine which accompanied the sentence of imprisonment has not been served and has been replaced by the sentence of imprisonment*.

The annulment of the suspension of the execution of the sentence under supervision consists in the abolition of the disposition of suspension of the execution of the sentence following the discovery during the supervision term of the existence of a punishment established for an offense committed before the final decision, which if they had been known would have led to the finding of non-fulfillment of the conditions provided by art. 91 C. code.

The final effects of the suspension of the execution of the sentence occur at the moment of fulfilling the supervision term. If the convict has not committed a new crime discovered until the expiration of the supervision term, it has not been ordered to revoke the suspension of the execution of the sentence under supervision and no cause of annulment has been discovered, the punishment is considered executed.

4. Conclusions

The individualization (personalization) of punishments is the operation by which the punishments are adapted to the needs of the social defense[6], in compliance with the conditions provided by the law. Crimes, even if they are of the same species, can appear in the most diverse ways, revealing varying degrees of social danger, and criminals may, on several times, present a different social danger, although they have committed the same crime.

If there is a discrepancy or even a disproportion between the seriousness of a crime and the punishment provided by law or between the dangerousness of the offender and the punishment imposed on him, the achievement of the purpose of the punishment is endangered, and it can even lead to results that are contrary to it.[7]

In order to perform his functions, the punishment must be adapted to the criminal's correction needs, considering the seriousness of the crime committed and the danger of the offender.

In doctrine, it is rightly considered that the individualization of punishment is a condition for achieving the purpose of punishment. Thus, if the offender is given too severe a punishment to his needs for correction, he will most likely react in a negative sense, and if he is given too mild a punishment, there is a real risk that he will be implicitly encouraged to commit other crimes in the

[4] Law no. 286/2009, published in the Official Gazette no. 510 of July 24, 2009.
[5] On the sanctioning nature of revoking the suspension, see Costică Bulai, Bogdan N. Bulai, *Manual de drept penal. Partea generală*, Universul Juridic Publishing House, Bucharest, 2007, p. 563; Mitrache Constantin, *Drept penal român partea generală*, Universul Juridic Publishing House, Bucharest, 2014, p. 98.
[6] Term *Individualization* is taken from the French, but it was taken in turn from the Latin *individuum.*
[7] See Gheorghe Diaconu, *Răspunderea penală*, Lunima Lex Publishing House, Bucharest, 2008, p. 75-76.

future.[8]

In another context, we mention that the personalization of punishments is not in opposition to the promptness of their application, but, on the contrary, the two ideas complement each other, in the sense that the prompt application of correctly individualized punishments is the premise that their purpose will be achieved.

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