The Evolution of the Social Criminal Law on an International-Wide Scale
(from the concept to the juridical institution)

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Abstract. Brought to maturity, the labour criminal law represents a real branch of the criminal law, as well as the bussiness criminal law, fiscal criminal law or the enviroment criminal law. Notwithstanding, labour criminal law cannot be consider merely as an accesory part of the corporate criminal law, but having an essential part, such as an exibit test, in order to determine new legal mechanisms, like the ones regarding criminal liability of the legal persons. In the Romanian legislation, the labour criminal law, as an interference zone between the criminal law and labour law, has to be regarded from the internal social realities governing the labour aspects, as well from the comparative law's point of view.

Key words: penal labor law, branch, infractions, contraventions, legislation, interference.

I. The evolution of the social criminal law on an international-wide scale

1.1. The relative inefficiency of the norms in the field of employment law created the necessity of appealing to criminal penalties, which started to be gradually applied. Moreover, this relative inefficiency of the civil and disciplinary penalties was noticed in the course of time, when the juridical norms in the field of employment law increased in number and complexity, hence the need to control an essential law branch, the legislator resorting increasingly often to criminal penalties. Within this framework, in order to provide a correct analysis of the implications of the criminal penalties, the doctrine considered the possibility of acknowledging the existence of an employment criminal law.

Typically, employment law is the law of the employment contract, and no work can be carried out without observing the labor protection norms. But the employment law penalties proved not to be enough, on the one hand, to achieve their preventive function, and, on the other hand, to carry out their penalizing function – when certain values such as a person's life, health and physical integrity are prejudiced (Coeuret &Fortis, 2003, p.2-5). Therefore, the need to introduce criminal liability (the most serious form of legal liability) became obvious, in order to achieve an effective protection of labor.[1]

[1] This happened in France in 1976, with the appearance of the law regarding the prevention of labor accidents. At that moment, the employment criminal law became a genuine branch of the criminal law – by achieving a level of protection which couldn't be granted by any of the two branches, taken separately.

1.2. The rapid development in the 1980s and 1990s of the social legislation entailed a real proliferation of crime in the field of labor relationships – thus, the development of the subject matter of what is considered to be the employment criminal law.

1.3. Employment criminal law appeared and evolved in those states (e.g. France, Italy or Belgium) where there had been a traditional sensitivity towards the issues of labor security and labor health, against a background where the social and human relationships affecting the labor system developed and increased in importance (Coeuret &Fortis, 2003, p.4).

1.4. In most of the states where an employment criminal law is not acknowledged by the doctrine[1] the adopted approach was to keep a demarcation line between the two law branches. However, there are crimes which prejudice labor relationships either in the Labor Code, or in other specific laws, or in the Criminal Code. In these states, where the doctrine rejects the idea of an employment criminal law which tackles this very area of correlation between the two branches, without altering the unity of the criminal law in any way, these crimes regarding the labor relationships are either not analyzed at all within the criminal law – in the sense, that, for instance, in *Germany*, there is a reference according to which not observing the norms regarding the labor hygiene and security is penalized according to the criminal law (without explicitly mentioning the exact norm) – or they are referred to **only by mentioning them** – for instance, in *Japan* where the text regarding the respective crime is presented, together with the mention as to where it is to be found, without any other comments on the matter (Yamaguchi, 1989, p.529-561). There is also a third category of states (for instance, Great Britain) where the doctrine in the field of employment law makes. **no reference to the criminal penalties (**Lockton, 2003.p.395-410).

2.1. **In the community law** shaping an employment criminal law hasn't been an issue so far.

Throughout the over 50 years of the European Union existence, the Member States were reluctant to inserting penalties with a punitive character in the Union's normative acts.

In the field of the criminal law, the national systems of the Member States differ from one state to the other and constitute a rather delicate legislating area, which didn't allow the European Union to interfere in this matter. Thus, in the social community law we do not find any provision in any directive or regulation which contains a criminal liability.

In spite of all these, exceptionally, in other fields there are certain acts which are defined as crimes. Thus, for example, in Directive 91/308/CEE on money laundering and in the Convention regarding the protection of the financial interests of the European Communities.[2]

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[1] See, for example: the USA, China, Japan, Canada, Cameroon, Tunisia, Germany, Norway, Switzerland etc.
[2] Convention 316 of 27 November 1995

3.1. **The International Labor Organization**, through the Conventions that it adopted, although it addressed and clarified a number of vital problems in the field of the labor relationships[1], (such as, for example, Convention nr. 100 regarding the equal pay of the masculine and feminine workforce for equal labor, Convention nr.111 regarding the discrimination in the workforce field[2], Convention nr.11 on the rights to associate[3], Convention nr.87 regarding the unionist freedom and the protection of the unionist right[4], Convention nr.98 on the enforcement of the legal principles of collective organization and bargaining[5], Convention nr. 29 regarding forced labor[6], Convention nr.122 regarding the workforce employment policy[7], Convention nr. 135 regarding the protection of the workers' representatives within the enterprise and the facilities granted to them[8], Convention nr.138 regarding the minimum employment age[9], Convention nr.182 regarding the interdiction of the worst forms of child labor and the immediate action in order to eliminate them[10], Convention nr.131 regarding the minimum wages[11] etc), didn't provide, in any of its regulations, for the incrimination of certain acts concerning the labor relationships, limiting itself to establishing the legal framework in which these relationships should be carried out, and leaving it to the discretion of the states that ratify the Conventions to establish, according to each state's peculiarities, the penalizing methods.

4.1. As we have shown, whether a state has or has not a Labor Code, no matter how it is drafted, there are certain acts which affect the labor relationships and which are incriminated by

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[1] Adopted by the ILO General Conference on June 29, 1951, came into effect on May 23, 1953. Romania ratified the Convention through Decree nr.21371957 published in the Official Bulletin nr.4 of January 18, 1958

[2] Adopted on November 26, 1968. Romania ratified the Convention through Decree nr.284 published in the Official Bulletin nr. 81 of June 6, 1973

[3] Adopted in 1921 and came into effect in 1923. Romania ratified the Convention through Decree nr. 1391/1930 published in the Official Bulletin nr. 91 of April 26, 1930

[4] Adopted on July 9, 1948, came into effect on July 4, 1950. Romania ratified the Convention through Decree nr.213/1957 published in the Official Bulletin nr.4 of January 18, 1958

[5] Adopted on July 1, 1949, came into effect on July 18, 1951. Romania ratified the Convention through Decree nr.352 published in the Official Bulletin nr. 34 of July 29, 1958

[6] Adopted on July 28, 1930. Romania ratified the Convention through Decree nr. 213/1957 published in the Official Bulletin nr.4 of January 18, 1958

[7] Adopted on July 9, 1964, came into effect on July 15, 1966. Romania ratified the Convention through Decree nr 284 published in the Official Bulletin nr.81 of April 6, 1973.

[8] Adopted on June 23, 1971, came into effect on June 30, 1973. Romania ratified the Convention through Decree nr.83 published in the Official Bulletin nr. 86 of August 2, 1975.

[9] Adopted on June 6, 1973. Romania ratified the Convention through Decree nr.83/1975 published in the Official Bulletin nr.86 of August 2, 1975

[10] Adopted on July 17, 1999. Romania ratified the Convention through Law nr. 203 of November 13, 2000, published in the Official Gazette nr.577 of November 17, 2000.

[11] Adopted in 1970.Romania ratified the Convention through Law nr.68/1993 regarding the guaranteed payment of the minimum wage.

the legislator. Moreover, we can notice that there are a number of crimes, related to the same acts, which are found in different legislations[1].

The crimes that affect the labor relationships are found either in the Labor Code or in the Criminal Code, or in specific laws.

In this context:

- on the one hand, in some European states, a new legal branch has appeared and developed in the doctrine (since the 1960s), namely, the employment criminal law. Regarded as a genuine (sub)branch of the criminal law, the same as the fiscal criminal law or the environment criminal law, it developed especially in the last two decades, playing an essential part in what concerns the relation between the criminal law and the social law (Coeuret &Fortis, 2003, p.1). In the French doctrine (Delmas-Marty, 1989, p.89) this idea is taken even further, the **employment criminal law** being considered as a part of the whole made up by the business criminal law[2]. In this situation one can speak of an enterprise criminal law. And, on the same line of thought, it is considered that the human dimension of the enterprise will constitute the subject matter for this branch (Delmas-Marty, 1989).

- on the other hand, in most of the states[3], no matter what legal system they adopted, an employment criminal law was not shaped **in the doctrine**.

II. The evolution of the social criminal law in the romanian juridical system

The evolution which took place in this area of the Romanian legislation, *an interference zone* between the penal law and labor law, can be explained not only starting from the internal reality characteristic to the labor relations but also from guidelines offered by compared law.

The objective existence in Romanian law of the regulation of some infractions, having as common premise a juridical labor relation and involving a qualified subject impersonated by the employee (clerk), led to the expression, in the juridical literature, of the opinion – that we partake – that **in Romania is emerging a penal labor law** (Ştefănescu, 2007, p. 115), although this is not considered as a law branch by itself.

As in the papers concerning the labor law there is no categorical opinion on the existence of a law branch – the penal labor law – and in papers on penal law this subject is only incidentally

[1] See, for example, *the violation of the right to free association in a trade union*, which constitutes a crime in states such as: Italy, Belgium, France, Canada, Tunisia, Romania.
[2] One can notice that in the business criminal law, most of the crimes occur within the framework of the enterprise.
[3] See for example: Germany, the Netherlands, Canada, Tunisia, the USA, Japan.

dealt with, the problem of categorizing this new *normative reality* remains open. In other words, it is necessary to establish:

- on one hand, if there are elements which allow that this reality generates, from the theoretical viewpoint, either the existence of a *distinct law branch* or of a *sub-branch* (of penal law or of labor law), or of a *juridic institution* (within the penal law or within the labor law);

- on the other hand, without placing it one of the three forms of law structure – branch, sub-branch and juridic institution – as in the classical view, if it can receive an autonomous and novel qualification.

Our opinion is that in the present conditions, as correlated regulations in the labor law and in the penal law are in force (concerning penal acts – violations of the labor relations), one can say there is in Romania also a **penal labor law**. This viewpoint is based on the factual existence of some common characteristics of a number of law violations, irrespective of the fact they are regulated or not in the Penal Code or in the labor law. In our opinion, these characteristics are:

- the incriminated acts are always engrafted on a juridical labor relation (Tufan, 2004, p.749);

- usually, there is a subordination relation of juridical nature between the active subject of the violation and the passive subject;

- they always imply a qualified subject impersonated by the employee;

- the incriminated act is usually performed at the workplace (Tufan, 2004, p.749).

From all these, it results that the penal labor law is *a new juridic reality*. However, this is not a penal labor law as a new law branch, which would be a third law branch along with the labor law and penal law. We are speaking about a *doctrine concept* which is objectively supported by the fact that the regulations, included in the Labor Code, the Penal Code and in the labor legislation concerning some violations, have the same purpose – insuring the good operation of the labor relations and a better labor discipline and, also, express the natural correlation between two branches – labor law and penal law and, consequently, have some specific characteristics.

In our opinion, one can speak about **a law sub-branch – the penal labor law** belonging – in the same line with the business penal law and environment penal law – to the special penal law. Thus there is no question of fragmenting the penal law by „breaking up" the penal labor law from the special penal law .

The infractions regulated by the labor legislation as well as those entailing *sine qua non* the condition of employee as specified in the Penal Code, they are and must continue to be an

integral part of the penal law. Consequently, the following question arises: *qui prodest* – to whom the recognition of the penal labor law could be useful?

The major rationale, as an answer to this question, is that, unlike the situation till now – when the science of labor law did not analyze the infractions regulated by labor legislation, in the future it will be not possible to analyze the problems concerning the beginning, execution, change and ending the juridical labor relations without an analysis of these infractions with a concise but permanent recourse to the science of penal law. Thus, without being a juridical answerability form specific to the labor law, it is imperative to analyze it also within this discipline, as well as the infringement acts (belonging to the administrative law). Otherwise, from the viewpoint of the labor law, it would not be possible to have a general all-inclusive view on the aspects related to the beginning, execution and ending of the juridical labor relations.

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