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The Execution of Criminal Fine Penalty

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Abstract: This paper aims at dissecting the criminal provisions on criminal enforcement of fines in current Romanian criminal law with the goal of highlighting the new penal policy stated in the larger field of criminal penalties. In the new Criminal Code the fine penalty experience a new regulation, but also a wider scope compared to the Criminal Code from 1968, with an exponential growth of the number of offenses or variations of them, for which a fine may be imposed as a unique punishment, but, especially, as an alternative punishment to imprisonment. Consequently, to ensure the efficiency of this punishment, the effective enforcement manner of the fine takes a new dimension. The study aims both students and academics or practitioners in the making. Furthermore, throughout the approach of this scientific research, new matters that new criminal legislation brings, are emphasized regarding this institution, both in a positive, and especially under a critical manner.

Keywords: offence; punishment; efficiency; social obligation

1. Introduction

Given the role that patrimony plays in individual and collective life and given the attitude that man has had, at all times, facing damages to his wealth, it was naturally for laws to convert in criminal punishments certain monetary constraints able to come of as a real “pain” for those who violate the social order.

As an effective mean of legal constraint, the fine can be criminal, civil, administrative, disciplinary, tax or procedural sanction. In criminal law, the fine is part of the main penalties and represents the sum of money that the convict is obliged to pay the state.

In terms of its substance, its content and object, the criminal fine is a pecuniary penalty. Its repressive character, as a mean of coercion, results from the forced reduction of the condemned patrimony; this forced reduction consists in paying an amount of money, fixed by the state criminal court.

The criminal fine, in relation to the repression function performed, can be used either as a *principal* penalty, in which case it operates as an independent sanction, or as a secondary punishment accompanying another penalty, that complement its function (Dongoroz, 2003).

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2. Historical References

In the ancient statutes, pecuniary penalties have had a large application. In time, as society had evolved from its rudimentary forms, people have passed from revenge (*vendetta*), as a form of compensation to the inflicted harm¹, to a form of a monetary arrangement between the victim and defendant. When repression was nationalized, the State understood to claim for its intervention a sum of money, bringing in this way into existence, the fine penalty.

Severe repression provided by the ancient statutes for all those who committed offenses against the community, has also led therefore, to another type of pecuniary penalties, confiscations (Dongoroz, 2003).

Turning back to the contemporary period, the fine is provided by all modern legislations, following an upward trend of resorting to it, both as main punishment and, especially, as an alternative punishment.

In the latest Penal Code system, entered into force on February 1st, 2014, the fine will operate both as main punishment but also as an additional penalty to imprisonment [for legal support, see Article 62 (1)]. On the contrary, if we look at the provisions of the Penal Code of 1968, we find that the penalty fine worked only as a main punishment and, in the special part of the code it was always provided as an alternative sentence.

3. Particularities

Criminal fine, as any punishment, has all the characteristics of criminal sanctions. Criminal fine has also some specific qualities whose knowledge serves to proper use of this sanction.

On the one hand, the fine, by its nature, is versatile, offering ample opportunities scaling and individualizing the punishment in relation to the form of guilt and current possibilities of the offender. The fine can be easily repaired in the event of judicial error and also has the feature to be more tolerable, since the execution of the criminal fine is accomplished in the regular convict's life and work; he is not "stolen" from family and job.

The fine fully realizes both *repressive* function, consisting in restrictions arising from the deprivation of the amount of money paid as fine, and *preventive* function, through its intimidating action.

On the other hand, in addition to the characteristics shown above, the fine has also some negative features. Thus, its purpose is to exert a constraint only on the individual offender, it hits sometimes indirectly the family of the condemned. That is because not only he, but also the members feel the consequences caused by the payment of the fine.

¹ For example, the Law of retaliation (*lex talionis*) was a penal law in some ancient peoples, and, according to this law, the accused was treated in the same way that he did with the victim, meaning that the defendant suffered an identical or similar punishment in kind or degree to the harm committed by him. The law, known as the "*an eye for an eye*", is known to us from the Mosaic judicial law described in the Old Testament (Deuteronomy 19, 16, 18, 19 and 21), regarded as a law of reciprocity and correspondence. However, this law of reciprocity and correspondence was known long before the Bible. The earliest evidence of this is the Babylonian king Hammurabi Code, *Codex Hammurabi* (1792-1749 BC), where the law of retaliation take many forms: "tit for tat", "bruise for bruise, foot for foot", "hand for hand", "bone to bone", "eye for eye", etc. Although today it seems an unimaginable cruelty, the law of retaliation, at the time, represented a real progress compared with previous practices. Hammurabi set retaliation in order to suppress a very dangerous reminiscent of tribal community, namely blood vengeance. Under the law of retaliation, the victim or her relatives could not cause greater harm than the criminal act committed by the accused.

Only Charlemagne (also known as Charles the Great or Charles I – King of the Franks from 768) offered a alternative when he legislated penalty *Wergeld* (literally "man's price"), which replaced private revenge (consisting in blood revenge), with a repair in money or goods.

Likewise, although the fine provided by the law is for the same act, equal for all, in reality, the fine it's equal for all, only in a relative way, because for some, the maximum fine means less and minimum fine, for others means a lot.

These flaws are inherent to all sentences. For example, prison is easily supported among needy people (for instance, there is a new practice of those living on the streets for committing crimes in early winter in order to be sent to prison; these people sell their freedom in order to "enjoy" a hot meal and a warm bed provided in state prisons), while wealthy man or intellectuals support it harder; also, the convict imprisonment affects it's family. In one way or another, no punishment can satisfy entirely the social groups, if not well proportioned with guilt. In fact, not the monetary penalties themselves bother, but their wrong application to serious offences (V. Dongoroz, 2003).

4. Spotlights on the Legal Status of Criminal Fine in the New Criminal Code System

In the new Criminal Code, the fine penalty experience a new regulation, but also a wider scope compared to the Criminal Code from 1968, with an exponential growth of the number of offenses or variations of them for which a fine may be imposed as a unique punishment, but, especially, as alternative punishment to imprisonment (about 60 in the 1968 penal legislation, more than 170 in the new Criminal Code).

Firstly, the judge will not qualify the amount of the fine between minimum and maximum predetermined parameters, according to art. 63 of the 1968th Criminal Code, instead, the court will quantify the fine by the day-fine system. According to art. 61 para. (2) Thesis II of the new Penal Code "the corresponding amount of day-fines, comprised between 10 lei and 500 lei, is multiplied with the number of days-fine comprised in a range of 15 days to 400 days". By making some simple math, we will find that the smallest fine can be equal to 300 lei and the biggest one cannot exceed 200.000 lei. The same day-fine system is also used for sanctioning the legal persons. According to art. 137 para. (3) Thesis II from the new Penal Code, the appropriate amount of a day-fine is between 100 and 5000 Lei. This is multiplied by the number of days-fine, which is between 15 days and 600 days. Thus, the minimum fine that may be imposed to legal persons shall not be less than 1.500 Lei and no more than 3.000.000 Lei.

Secondly, the provisions of the new Criminal Code allow, in art. 62, the possibility of applying a fine besides imprisonment as a primary, complementary and optional punishment when the offense was committed in order to obtain material benefits.

Thirdly, it is introduced as a novelty, the possibility of replacing the obligation to pay the unexecuted fine with the obligation to perform unpaid community service work, if the fine cannot be executed in whole or in part for reasons not imputable to the person convicted [art. 64 para. (1)].

Finally, the provisions of Article 64 of the new Criminal Code has eliminated the problem that consisted in the impossibility of replacing the criminal fine (in case of failing to pay, especially with guilt), with imprisonment for certain situations where it was not provided as an alternative to the fine punishment.

5. Enforcement of Fines in the Old Criminal Codifications

Paragraph (1) of art. 425¹ of the Criminal Procedure Code of 1969 provided the convict the opportunity to pay the fine voluntarily, therefore criminal enforcement office would send him an invitation to pay the fine and submit the receipt of full payment to criminal enforcement office within 3 months since the decision had remained final. The law did not expressly state if the payment should be voluntary and fully paid, but the submission of payment receipt implied that the payment was paid full and voluntary, and from this moment only the penalty was considered enforced. The competent tax authorities were indebted to receive the payment.

If the convicted person did not have the financial means to pay the fine, the law allowed, according to par. (2), art. 425 Criminal Procedure Code, to request deferred payment of the fine within a maximum of two years. Basically, the convict would have submitted an application to the enforcement court, application whose object was the rescheduling of payment. Depending on the evidences presented by the convict on his bad financial situation, the court admitted or rejected the application as filed. The request could be submitted to the court both before and after the expiry of three months term set by art. 425 Criminal Procedure Code for voluntary payment, because the application for rescheduling cannot have been dismissed as being late in the absence of a legal term.

Paragraph (3) regulated the situation of non-payment. Thus, in case of non-payment of the fine fully within the 3 months term or in case of non-payment of an rate, the execution court would submit to competent authorities a copy of that excerpt regarding the fine enforcement to the competent financial body in order to execute the fine according to the law on enforcement of tax claims and with the procedure of those provisions.

The legal provisions related to the criminal fine enforcement for legal persons, were concentrated in the art. 479⁹ Criminal Procedure Code. Their contents are identical to the provisions of art. 425 which states the execution of fine for the individual. Consequently, the explanations given above are applicable to legal persons.

Criminal Procedure Code contained provisions aimed at the enforcement of the criminal fine. Thus, in paragraph (1) of art. 163 there were provided, as a means of guaranteeing the enforcement of the fine, the establishment of precautionary measures. Also, in the art. 260, regarding the additional data must be included the report prepared by the criminal investigation body, there is stated, as a general obligation for the prosecutors, to insert the assurance measures taken in the course of prosecution for the enforcement of the fine.

6. The Enforcement of fines in the New Romanian Criminal Codes

In the new Criminal Procedure Code, the legal provisions on the enforcement of fines for individuals can be found in art. 559. The provisions contain only 2 paragraphs and they are identical to the first two of art. 425 from the old Criminal Procedure Code. Therefore, the first procedural novelty

¹ Art. 425. (1)The person subject to the fine penalty must submit the receipt of the total fine payment to the execution court, within 3 months since the decision remained final. (2)When the convict cannot pay the entire fine within the term provided in the preceding paragraph, the execution court, upon the request made by the convict, may order the payment of the fine in rates, over maximum 2 years in monthly rates. (3)In case of non-payment within the term provided in paragraph 1 or in case of non-payment of a rate, the execution court submits a copy of that excerpt regarding the fine enforcement to the competent financial body in order to execute the fine according to the law on enforcement of tax claims and with the procedure of those provisions.

concerning the enforcement of the criminal fine is that forced pursuit of debts are no longer stated in case of non-payment of the fine within the legal term of 3 months or non-payment of one monthly rate.

Although, to a first sight we will have the impression that the prosecution remains discovered in this area, without any the possibility of recovering the tax debts, this is not the case due to new regulations regarding replacement of the fine with imprisonment, respectively, with the obligation to unpaid community service work.

The enforcement of penalty fines is fulfilled in accordance to the good faith of the convicted by three separate hypothesis. *The first*, which is the easiest of all to understand, that is simple, fast and efficient (that is, in fact, preferable), the convict accepts the judgment of the court and pays the fine for which misdemeanor he was convicted.

In the second hypothesis, the convict, even in good faith, cannot pay its fine due to circumstances beyond his control. In this case the provisions of art. 560 of the new Criminal Procedure Code come in aide. The enforcement court, who is competent to replace the non-paid obligation with unpaid community service work, notify *ex officio* to analyze the convict's case. In this situation we can to deal with two solutions according to malleability of the defendant.

The first solution implies the replacement of the payment obligation with the obligation to provide unpaid community service work [under art. 64 para. (1) of the new Criminal Code], with the convicted consent for this solution. The second solution, when the convict does not agree with the replacement, claims the court to replace the payment obligation with imprisonment [under par. (4) reported to par. (1) art. 64].

For the rigor and for giving meaning to provisions of the art. 561 from the new Criminal Procedure Code, we will extend the time scale applicable for this hypothesis until after the favorable decision that will replace the payment obligation with the obligation to perform unpaid community service work, namely until the effective work is carried off. But, once we arrived to this point, what would happen if our convicted becomes suddenly dishonest? The answer to this question is found in art. 561 of the new Criminal Procedure Code provisions. Thus, if the convicted does not perform his required community service under the conditions established, the court will proceed to replacement of the obligation to perform unpaid community service work with imprisonment [under par. (5) letter a of the art. 64 of the new Criminal Code]. On the other hand, if the convicted climbs a higher step on the crime ladder and commits a new crime discovered before the full execution of unpaid community service work, the court shall revoke the community work and replace it with imprisonment [under par. (5) letter b, art. 64 of the new Criminal Code].

Finally, *in the third case*, the malevolent convict, fails to perform the payment obligation of the fine. Based on art. 560 para. (2), the court is notified *ex officio* or notified by authorities that runs the punishment. In the next step, the court will proceed to analyze the convict Case, stating the bad faith. In this situation, the payment obligation of the unexecuted fine will be replaced by imprisonment under par. (2), art. 63 of the new Criminal Code. with a number of days equal to the number of days unexecuted.

The rules governing the enforcement of fines for legal persons under the influence of the new Code of Criminal Procedure, are located in the 497 article. Their content is identical to the old law. Therefore, in case of non-payment of the penal fine within the three months term or no-payment of one monthly rate, the court will proceed to forced execution of legal person's assets in order to recover the debt due to the State.

7. Critics and *De Lege Ferenda* Proposals

A. The first institution which we will discuss is the replacement of fine with imprisonment in the special situation when the convict fails, beyond his powers, to execute his fine penalty but he does not consent to provide unpaid community service work. It is a special case of questionable replacing of fine with imprisonment, in which case the legislator assimilates the lack of consent - in transforming the fine penalty into unpaid community work – with convict's bad faith in his non-execution. However, the convict lack of agreement to perform community service, it is not in all cases evidence of bad faith nor any flagrant opposition to serve their sentence.

In order to demonstrate this, we will make a short exercise of imagination. Let us imagine that a director of a large company working in software design for securing the telephone conversations is found guilty, according to art. 208 new Criminal Code, of harassment of his ex-wife and is punished for by a fine penalty. But, because the divorce was finalized by the obligation to pay of a substantial amount of money his former wife, he is unable to pay the fine although he has no intention to evade his punishment. After the 3 month term expiration for payment, the court notified ex officio, call the director to court for explanations and, after concluding that the failure to pay was due to reasons out of the convict's powers, according to art. 64 para. (1) new Criminal Code, it is required the director's consent to replace the obligation to pay with the obligation to perform community service. But the convicted person (director) does not consent to this and rejects the possibility of community service work on the grounds that, although the company's products have nothing to do with his crime and their quality and their functions have not been tainted by this, the company image will suffer because of competing companies that will use this situation in order to denigrate his products. As a result, revenues will decrease and the company's capital will decrease by the sudden drop of shares listed on the stock exchange. Obviously, the final result is predictable: reducing the number of employees and, why not, a significant decrease in fees to be paid to the state. The question is, how do we apply the law in this case? Obviously, the court will give effect to legal provisions, and the lack of consent the sentenced person shall be assimilated to bad faith, and therefore it will replace the fine with imprisonment. But, is this solution fair?

Personally, I think that we might insert into art. 64 para. (6) a derogatory statement applicable the convicted being unable to pay the fine for reasons outside of his powers and does not consent to replace the payment obligation with the obligation to perform community service, as follows:

“(6) If the convicted person is in the situation referred to in para. (1), and does not consent to the provision of community service work:

a) because of duly substantiated grounds, and presents solid guarantees in favor of monetary payment in the near future, the court may grant a period of grace of maximum 3 months for payment;

b) in all other cases, the unexecuted fine shall be replaced by imprisonment according to art. 63”.

Of course, the term “duly substantiated grounds” can be challenged as too wide, but if the legal text specifies only some limited circumstances, then, in time, it may arise some new legal situations that will remain on the outside. In addition, for the same reason, the text could be attacked with exception of unconstitutionality because it would create some legal rights in a preferential way, that will work only in favor of certain people and situations.

Conversely, if we return to the legal provisions of the new Criminal Code, the situation would be entirely different if the replacement of the obligation to pay the fine with the obligation to perform community service work, will be mandatory for the execution court. Thus, the lack of consent could

be seen as an evasion from execution of the sentence, that would attract the fine replacement with imprisonment (Antoniou, 2011).

B. Another legislative downside, in my personal vision, is the absence of any provisions that rewards the good faith of convicted persons to a criminal fine in paying their obligations. Such rewards could consist in pecuniary percentage reductions, proportional with time passage, if the convicted pays in a relatively short period after the sentence remains final.

Firstly, the presence of such facilities would be an impulse for convicts to extinguish their fines in a legally way and they would not search for ways to avoid the payment obligation by defeating the law.

Secondly, it can be a relief measure to criminal courts for some convicted persons to use these facilities rather than appealing without success the decisions of the court.

Finally, these provisions could have a positive effect on the pecuniary resources paid to the state budget, resources that can be used properly in some other fields of social protection but, equally, in justice improvement.

In light of these arguments, and as a result of actual criminal policy - carried out by the legislator in the new codifications - to promote the use of fines, both single and especially alternative, requires *de lege ferenda*, the introduction of penal provisions that reward the good faith of sentenced person to suffer the consequences of their conviction. We must specify that the purpose of such provisions is not to facilitate social categories nor people who have substantial financial means, but is to lay down the legal grounds for a positive attitude from the law towards convict's good faith. In addition, one of the main function of criminal punishments is to create an example for all the other members of society with the consequences that comes along with criminal offences. Consequently, we can create another side of this function, a positive side, that encourages convicts to pay their obligations.

On the other hand, if we look at the new criminal legislation, we see that in case of voluntary nonpayment, the solutions offered are quite brutal - prison or community service - which is not a reprehensible one, because the purpose and functions of punishment should be brought out by the coercive force of the state. Precisely these alternatives, much more acidic, can create a flourishing climate suitable for the execution of fine penalties on their natural way - by paying some money to state budget. Also, we must point out that the development of this trend on fines payment, could lead to the avoidance the replacement costs, for implementing more severe punishments.

8. Conclusions

The transformations suffered by criminal fine in the new Criminal Code imposed, consequently, in the new Code of Criminal Procedure the adaptation of criminal fine enforcement to give meaning and applicability for these changes.

Reviewing these changes, we will notice that the legislator eliminates the forced pursuit of sentenced person in case of nonpayment within the time limit of three months or a rate and proceed directly to the file analysis in court for replace the fine. Another important change is related to the replacement of the fine, by adding the obligation to perform community service, in addition to imprisonment, as a new way of enforcing the sentence in case of replacement.

Analyzing these changes we can observe the general direction towards the legislator attends to. The aim is no longer forced pursuit of sentenced person assets, which often affects the persons to whom the convict has legal obligations, in return the obligation to pay the fine it will be immediately

replaced by the obligation to provide a number days-imprisonment or the obligation to perform community service work. In this way, there are created the necessary tools through which the convict is compelled to fulfill its obligations arising from criminal court decisions without further reaching in some situations when the replacing was inoperable due to same legislative gaps.

Finally, after considering all these factors, we see that the institution of fine enforcing evolves and transforms itself due to the evolution of society. Therefore, we are in a constant endeavor to adapt the legal instruments and institutions of criminal law in order to effectively fight against crime. Although the new codes can be sometimes criticized for some of their solutions offered for some problems related to the fine enforcement, we can only appreciate the overall progress in this matter.

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