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**(Summary)**

# PENALTIES ACCORDING TO ORTHODOX CANON LAW AND THE ROMANIAN PENAL CODE

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**CONTENTS**

Summary

The church is a divine-human institution, governed both by divine and human laws. Members of the Church are responsible not only in front of ecclesiastical authorities but also in front of state authorities and for this reason, even when enforcing penalties imposed by the Orthodox canon law, ecclesiastical courts also take into consideration the penalties applied by state tribunals.

The aim of this thesis is to respond to urgent current problems, especially in the context of preparations for the entry into effect, starting with February 1, 2014, of the new Romanian Penal Code, which will bring essential changes to the judicial institution of sanction. These changes, inspired by European legislation, are indirectly owned also to the impact that Canon Law, starting with the 4th century, has had on Criminal Law.

Either if the matter of discussion represents sanctions stipulated by the Romanian Penal Code or by the Orthodox canon law, they cannot be enforced by simply following the letter of the law, but by considering certain particularities identified in the process of individualization of the punishment so that the sanction leads to the effects expected by the legislator.

In order to fulfill such objectives, the one called to accomplish justice must know not only the doctrine of the judicial institution of penalty, but he must also look in perspective, knowing the history, the particularities, purposes and effects of each sanction that he will administer. Such a vision can only be attained by studying the institution of sanction in an interdisciplinary and multidisciplinary manner. That is why I respectfully thank my scientific coordinator, Professor Phd. Priest Nicolae V. Dură, for accepting this subject and for his precious guidance that he offered throughout this research, which has opened my research perspective in interdisciplinary and multidisciplinary fields.

In order to write this thesis, I have used not only the text of canonical and penal legislation, with their corresponding commentaries, but also a rich specialized literature amounting to a bibliography with numerous studies (judicial, canonical, ecclesiological, etc.), manuals, treaties, dictionaries, etc. from both fields of research – judicial and canonical. Naturally, these bibliographical sources include the most important scientific

works in the field, either very old works, researched for the first time, or recent ones, including those published in the current year, 2013.

In the current thesis, I went further than simply presenting and enumerating certain statements already written in scientific studies, proceeding to indicate all erroneous information that was slipped in specialized literature by authors without a interdisciplinary and multidisciplinary background and stating the correct doctrine regarding the institution of penalty both in the Orthodox canonical legislation and in the Romanian Penal Code. That is why I consider that my PhD thesis, entitled "Penalties according to Orthodox canonical legislation and the Romanian Penal Code", will become a reference both in the field of Orthodox canonical legislation and that of the Romanian Penal Code, being the first such work in Romanian-language specialized literature.

The thesis is structured in five main chapters, preceded by an introduction and followed by the conclusions.

In the introduction I have insisted, in order to offer the reader the possibility to become more easily acquainted with the notions used throughout the paper, on certain clarifications of notions, followed by the reasons which have made me propose this subject and to cover it in this thesis of over 300 pages. Naturally, these motives indirectly reveal the urgency of the subject both for canonists and for experts in criminal law. In this section I have also presented, in brief, the structure of the thesis, in order to get the reader acquainted with its contents and to introduce him in its conceptual framework.

Also in the introduction I informed the reader on my scientific research methodology, revealing the major ideas that have guided me in the critical assessment both of the main sources, with legal or canonical content, and of specialized literature.

Undoubtedly, this section could not lack references on works analyzed and on the corresponding bibliographical content. Since the very beginning I insisted on the fact that it is for the first time that such a subject and thesis – with comparative contents – is explored in Romanian judicial and canonical literature. Moreover, my scientific contribution resides not only in writing a groundbreaking thesis in the canonical and judicial fields of research, but also in the manner in which I examined and assessed the texts, in which I motivated my own statements, and, last but not least, to formulate my own ideas and opinions, even in situations in which I came to conclusions that are

different from those of prestigious canonists and legal experts. Obviously, in order to materialize this reality I have permanently been guided by the old principle which states that *amicus Plato, sed magis amica veritas*.

In the first chapter, entitled "Orthodox canonical legislation", I revealed the characteristics of Orthodox canonical legislation on one side, and I have shown the manner in which this legislation appeared and developed throughout history, on the other side. Thus, I highlighted that canon law originates in the New Testament principles established by our Lord Jesus Christ, and that the holy canons, which regulate Church life, "bear the seal of divine order".

All the laws that have been created and adopted by ecclesiastical authorities invested with law-giving powers during the classical era of church law (the first millennium) are called "canons", meaning rules or means through which the atonement of the faithful is achieved. These canons have their *sui-generis* particularities, both in terms of content and of terminology and language. This explains the fact that they are not part of state legislation during any period, be it Roman, Byzantine-Roman or Byzantine. For instance, many of the canons adopted by the Synods, both local and ecumenical, do not indicate any sanctions in case of their breach. That is because the holy canons are not intended to coerce people from doing certain deeds, but to guide and to correct them inside the framework of church life.

Another specific trait of holy canons is the fact that they do not leave the possibility of their abolishment, as they are sacred in nature. That is why any change or replacement of canons was never made by the procedure of abolishment/abrogation. Even when the contents of certain canons have fallen into desuetude, they have been replaced or completed according to the demands of specific epochs, but always in the spirit of the canonical law of the Ecumenical Church and of her canonical doctrine.

The Orthodox canonical doctrine draws a clear distinction between the general legislation of the Church and the special Church legislation. The general legislation is made up of her fundamental laws (the holy canons), which cannot be abolished or amended, being mandatory for all times (according to canon 7 of 3rd Ecumenical Council, canon 1 of the 4$^{th}$ Ecumenical Council, canons 1 and 2 of the Trulan Synod, canon 1 of the 7$^{th}$ Ecumenical Council, etc.) These general laws must be the foundation

for special laws, which are nothing else than the adaptation of general legislation to the needs and demands of each epoch. Special laws are not applicable to the entire Church and can be issued by the Synods of local Churches and even by the bishop of a diocese.

The legislative power of local synods covers every issue that is not expressly specified in the 'general legislation' of the Church and for which a need for special regulation is felt. The power of bishops to give laws comes both from their hierarchical dignity, as followers of the Apostles, and from the autonomy granted to them by canonical legislation, inside the dioceses they head (according to Apostolic canon 34). Thus, without breaching the general canonical legislation of the Church or the decisions of particular synods, each bishop has the right to issue mandatory laws for all Christians living in his diocese.

The general legislation of the Church is comprised of four important categories of canons, which are grouped in the following order: Apostolic canons, canons from Ecumenical Councils, canons of local synods and canons of holy fathers. All these canons, be them apostolic, ecumenical, local or patristic, have been issued in different places and periods of time so that, since the earliest times of Christianity a vast process of compiling and collecting them began, a process that is not identical to that which came to be known as Roman Law and was introduced in the Roman-Catholic Church through the means of the Napoleonic Code.

The legislative collections of the Eastern Church have included not only canons, as they were grouped into three categories: collections of purely ecclesiastical law, collections of political-ecclesiastical law and collections that included ecclesiastical and political-ecclesiastical law, which bear the name of nomocanons.

This thesis describes, in order, the most important collections, grouping them in four categories: Apostolic collections, canonical collections, nomocanonical collections and political-ecclesiastical collections.

For the subject covered in the PhD thesis, I have analyzed solely the text of ecumenical canonical legislation from the first millennium, which, due to the Canonical Syntagma (collection) attributed to Patriarch Photios ($9^{th}$ century), remained the sole *Corpus juris canonici* of the Eastern Orthodox Church.

The second chapter, entitled "Penalties according to Orthodox canonical legislation", features the penalties stated by the above-mentioned legislation for ecclesiastical crimes. I also mentioned that, according to canon law, the aim of any sanction is to straighten the one who has erred, according to the principle mentioned in the Holy Bible: "I do not desire the death of the sinner, but that the sinner turn from his way and live" (Ezekiel 33,11). That is why, in the Eastern Church, punishment was never a means of revenge or satisfaction for the injured party, but an instrument to discipline and straighten the person who breached moral or canon law.

By respecting this canonical principle, I have critically assessed and rejected the Western idea that made its way into specialized literature that canon law includes two categories of sanctions: healing and vindictive (punitive). I showed that this division, of scholastic origin, can find its formal utility only in the canon law of the Western Church, since, in the Orthodox East, no vindictive (vengeance) penalties have ever been accepted, but only those intended to bring the atonement of the wrongdoer and to guide him and correct his behavior.

Obviously, this different approach on the notion of punishment indicates that, in the West, criminal canon law has been constructed in the framework of Roman judicial thought instead of the Biblical framework, as was the case with the East.

The power of the Church to punish is based on divine right (Matthew 18, 15-17; John 20, 23, 1 Corinthians 5, 3-5, 1 Timothy 20, 23), and the notion of punishment can only be understood in reference to revealed truth, completed and detailed by the Fathers of the Church through holy canons.

Initially, the Church viewed acts contrary to her teaching of faith as well as any wrongdoing and crime as a sin, meaning a breach of Christian moral law, which is based on the Holy Scripture, and only later as violations of canon law, which had to be punished correspondingly.

For the Eastern theology, sin is a violation of Divine justice and that is why the sinner is called to answer in front of divine authority, which not only chastises but also forgives if there is a sincere repentance and willingness to straighten. From this point of view, the *forum internum* of judgment is vastly superior to any form of external

judgment, for it accomplishes the straightening of the person capable to acknowledge both his state of sinning and his desire to be atoned.

I have also showed that various disciplinary swerves are considered by the Church to be 'sins' and that, due to her sacramental character, focused on the Holy Mystery of Eucharist, she also has the gift to administer the Holy Mystery of Repentance (Confession), providing the possibility of clearing of sins. Thus, through the effects of these two Sacraments, that of Eucharist and of Repentance, man is granted forgiveness of sins and hope of eternal life. That is why the sanctions applied by the Church, no matter their nature, are intimately connected to the effects that the two Sacraments produce.

The Church has been forced to adapt to the needs of each epoch and each society, a reason why she appropriated some profane judicial terms throughout time. Thus, illicit deeds, which initially were called sins, later received a terminological form borrowed from secular judicial language, such as crime, offense, misbehavior, etc. Through the import of such notions, with predominantly judicial content, by the Church, ecclesiological and canonical language remained tributary to Roman-origin judicial jargon.

For a correct understanding of such terms, I made a critical analysis of each term, but since the works of canonists are not uniform in matters of distinctions between errs, misbehavior, crimes or offenses, and in canonical doctrine the illicit deeds or the lawlessness through which canon law regulations are breached or avoided are usually called 'ecclesiastical crimes', in my PhD thesis I used only the word 'crime' for all actions which lead to the punishment of a *forum externum* judgment.

Believing that we cannot understand penalties without understanding the crimes and the manner in which sanctions manage to annihilate the effects of crimes, this chapter presented penalties firstly according to the crimes for which they are administered, according to canon law, and then I made the necessary mentions and clarifications according to each punishment. I must add that these mentions and clarifications have been made in the spirit of Orthodox canon law, to which I made references each time I assessed the content of the deed and that of the penalty administered by canon law for it.

The first category of ecclesiastical crimes includes the general ones, which can be perpetrated by all members of the Church, no matter if they are clergy, laymen or monks.

Such crimes are further divided into: crimes against faith (apostasy, heresy, schism, blasphemy against God, and superstition), crimes against sanctity (sacrilege and simony), crimes against the self or against the neighbor (which can be against physical life: murder, suicide, abortion; against honor: fraud, defamation, slander, visiting dishonorable places, adultery, fornication, etc; against goods belonging to a person: theft, embezzlement, fraud, usury, etc.); crimes against society (high treason, conspiracy and perjury) and crimes against church duties (not attending church service, refusing to support the Church, activities unsuitable for a Christian, etc.)

The second category of ecclesiastical crimes includes deeds which can only be done by members of the clergy. These are in connection to the three categories of works that they must do in fulfilling their mission. Thus, there are crimes related to the teaching power (the refusal to teach the correct faith or the propagation of faith outside their given territory), crimes related to the sanctifying power (acts of consecration against specified regulations, divulging the secret of confession) and crimes related to administrative power (members of the clergy dealing with activities incompatible with priestly status).

The third category of ecclesiastical crimes includes those deeds done by monks. They are related to the three monastic rules: that of unconditioned obedience (disobedience towards the local bishop or towards the leader of the monastic community), of voluntary poverty (requesting money for receiving someone in the monastic community, gathering disposable or futile goods), of chastity (immorality and all other sins related to it: fornication, sexual perversions, etc.)

For each of these crimes I have not only stated the punishment according to Orthodox canon law, but I have critically assessed, in compliance with the Orthodox canon doctrine, each sin individually and the manner in which such sanctions should be applied nowadays.

The text of the thesis features special emphasis on main sanctions for clerics (defrocking, removal from sacred orders, excommunication, anathema, reprimand, advice), as well as main sanctions applicable to laymen, such as anathema and excommunication, canon, etc. since I have found that even in certain specialized works there is confusion with regards to defining and determining the content and the range of enforcement of penalties.

The penalty of defrocking can only be applied to clerics of holy orders (bishop, priest, deacon) and means the interdiction for the cleric to exercise churchly power, and of bearing the name and the dignity of member of the clergy, and his laicization. The defrocking is the loss of clergy status by those who make themselves unworthy of the dignity to which they were called.

I mentioned also that the defrocked clergyman doesn't lose his sacramental power, but only the right to service, since, according to the dogmatic and canonic teaching of the Orthodox Church, the gift of priesthood received through the Holy Mystery of Ordination has an undeletable character. As such, the act of defrocking cannot remove the grace obtained by the clergyman through ordination, but only withdraws his right to use it. There is, however, a special situation, in which defrocking, by which someone's right to "practical use of sacramental capability" is withdrawn, is the official acknowledgement – made by the Church – that the former clergyman has fallen from grace. This is the case of defrocking for blasphemy against the Holy Spirit. In this case, the clergyman not only loses the gift of priesthood and his status as a cleric, but is also excluded from the Church.

Initially, the competent authority for deciding defrocking – for priests and deacons – was the bishop (according to canon 5 of the First Ecumenical Council, canon 6 Ant., canon 14 Sard.). In compliance with canonical regulations, the punished had the right to appeal to the Metropolitan bishop or to the Metropolitan synod. The appeal was not just a privilege for priests and deacons, but a necessity for justice. With regards to the defrocking of bishops, this penalty can only be administered by the Metropolitan synod or by the Holy Synod of the respective Church (in the case of autocephalous Churches).

Further, I have highlighted that the sanction of removal from sacred orders has known, throughout history, three stages: firstly the interdiction to celebrate services for a period of time, the permanent interdiction to perform certain services and lastly the interdiction to perform all attributes of clergy service for all time, but with the right to bear the title and dignity of clergyman.

I have also highlighted that the removal from sacred orders is never understood as degrading a clergyman from a superior level to an inferior one and that such a practice is contrary to Orthodox canonic doctrine, according to which the sacramental capability

attained by a clergyman through ordination is proportional to the hierarchical dignity. The demotion of clergymen can only be done in matters of administrative ranks, but a bishop can never be demoted to priest or a priest to deacon. Consequently, the penalty of removal from sacred orders is the interdiction for a clergyman to celebrate services, but with the right to use his clerical name and dignity.

Besides the two main sanctions (defrocking and removal from sacred orders) with definitive character, the Orthodox canon law includes also lighter penalties for clergymen, with the purpose of encouraging them to part ways from bad habits. Such sanctions are suspension, reprimand and advice. Usually, holy canons demand that such sanctions be applied firstly for certain crimes, and only if the clergyman does not straighten should harsher penalties follow. This church practice of gradual sanctioning emphasizes the healing character of canons even in the case of clergymen, who know or should know the teachings of the Church, helping them to overcome their state of sinfulness – caused by the crime – and to return to normality.

The punishment of clerical suspension is the temporary exclusion of the sanctioned clergyman from priestly service, but not from the clergy. The reprimand is a sanction administered by the Metropolitan to bishops or by the local bishop to priests and deacons from his diocese, but which can also be applied by the Synod. As manifestation, it can be particular or public. The advice or admonishment is intended to draw the attention of the cleric on his church duties that he is not fulfilling. It is administered under the same conditions as the reprimand and aims the repentance and straightening of the punished.

The anathema, first among penalties applicable to laymen, but which can be administered to clergymen as well, is the harshest penalty that the Church can administer to its members, as the one sanctioned with it is deprived of all the sanctifying means of the Church, including the possibility of salvation. This banishment from the Church is done firstly in an educational purpose, and secondly as to defend the other faithful from the disorder that the presence of that person inside the Church would cause.

Having a people-loving spirit, the Church only administers the penalty of anathema for extremely serious crimes, in extraordinary cases, as last resort, and only after other sanctions, such as removal or excommunication, have been enforced.

The anathematized are excluded from the Christian community and no longer have the right to benefit from Holy Mysteries or hierurgies of the Church, as they lose their status as members of the Church. That is why the Church forbids Christians to pray for the anathematized or to pray with them (according to Apostolic canon 10, Ant. 2). Moreover, the anathematized is prohibited from any connection to the faithful and those who die in this condition are also prohibited from Christian burial.

With regards to the punishment of excommunication, I highlighted the fact that in the primary Church there were several steps in enforcing this measure. They were steps of repentance, which the penitent had to fulfill in order to heal his soul from the wound caused by the sin. That is why the period of penance for each step, or the number of steps that he had to go through was directly proportional to the seriousness of the crime committed. These steps of repentance fell into desuetude over time, lacking meaning after the disappearance of Paganism. Nowadays, only the last step of repentance (the sitting together) has been maintained for those who are excommunicated, as it answers better to the needs of contemporary Christian society. In matters of duration of penance, this is decided by the confessor, according to canonical law and with the repentance of the sinner.

In matters of the way in which sanctions are applied, I have emphasized the fact that the penalty administered to a sinner must be suitable and correct. It must also be in compliance with Orthodox canonical law, and must help in a real manner to the straightening of the penitent and to re-establish order in the respective community. Three principles must be respected in enforcing sanctions: an inquiry into the reasons for the criminal conduct, an analysis of the aggravating or mitigating circumstances and the imposing of the given sanction by a local tribunal throughout the Church.

Punishments administered in the Christian community by the Church have a well-defined purpose, which has precedence over all other church law principles or other principles. That is why in deciding penalties it is not the letter of the law which has priority – although it is always taken into consideration – but the fulfillment of the main objective – the straightening of the penitent and the return to order in the Church. Considering this, no ecclesiastical penalty, no matter the status of the member of the Church or the crimes for which it is administered, is not issued for eternity, with the

exception of cases where the penitent insists in sinning and/or does not want to be cured, and, naturally, for blasphemy against the Holy Spirit.

The cessation of a sanction or of a crime can happen either out of reasons of law or of reasons of fact. Reasons of law are absolution and pardon. Reasons of fact are the nearing of death, sickness and prescription.

The third chapter, entitled "Romanian Penal Code" presents the characteristics of the Romanian Penal Code and the manner in which this legislation appeared and developed throughout history. Thus, the history of the Romanian Penal Code begins with the acquiring of internal legislative and administrative autonomy of Romania, immediately after the union of the two Principalities and with the reign of Alexandru Ioan Cuza. The Romanian Penal Code represents, in fact, the unification of criminal law and marks the beginning of Romanian criminal law of Western origin.

The first Penal Code of Romania, written in 1864 and published in 1865, was not an original creation, born out of the tradition of the Romanian people, but was a work inspired mostly from the French Criminal Code (1810) and the Prussian Criminal Code (1851). Consequently, the first Romanian criminal code bore the mark of the so-called "Classical School", whose principles were repeated by certain modern principles as well.

A very important role had the change of focus on reeducation of criminals for their reintegration in social life. Thus, criminal law took a new turn, based on the importance of social factors. The 1864 Penal Code proved to be appreciated abroad as well, as it was in accordance with the new humanistic principles, being, in certain aspects, even more humane that the French criminal law, which still maintained the death penalty.

The Penal Code distinguished three types of transgressions, grouped into crimes, offenses and contraventions. Penalties were also of three kinds: criminal, correction and police. As such, there were criminal penalties for crimes, corrective penalties for offenses and police penalties for contraventions.

The 1936 Penal Code entered into effect on January 1, 1937 and was a real legislative progress, being considered one of the most advanced criminal laws, since it was based on democratic and progressive principles specific to Romanian society in those

times. The code has principles of the Classical School, as well as aspects from the Positivist and Neoclassical schools.

I have highlighted the fact that in the new Penal Code punishment received a new meaning, that of educating the criminal, a principle leading to the individualization of punishment.

One of the essential characteristics of this criminal code was the "thorough regulation of the crime". Thus, besides the three categories of crimes inherited from the old Code, other several categories have been added, such as common crime and political crime, with special sanctions and safety measures.

Unfortunately, just one year after the entry into effect of the new Penal Code, the dictatorship of Carol II began. Under such circumstances a new Constitution was published and the Penal Code was used for political purposes. The amendments to the Penal Code were generally made by adopting special criminal laws and sometimes by directly amending an article of the Penal Code. For instance, in 1938, with the new Constitution, introduced for political purposes, death penalty was installed even during times of peace, for crimes against national security, a penalty abolished only in 1990 by decree. Moreover, after the end of WW2, penalties such as camp interment and forced relocation were introduced in criminal law.

The 1936 Penal Code was republished by the Communist regime in 1948 as the "Penal Code of the Romanian People's Republic", with certain amendments. The most important of them aimed to embed the law with ideology and transforming it into an instrument of politics. Thus, all specifications of the Penal Code that were considered incompatible with Marxist ideology have been annulled and the institution of crime by analogy was introduced.

On June 21, 1968, after a long process of revision, a new Romanian Penal Code was adopted, entering into effect on January 1, 1969. Although it was written under the control of the Communist regime, it departed from Marxist ideology, using principles of criminal policy common to all contemporary legislations.

The 1968 Penal Code, with certain later amendments, is still in effect today, which motivated me to analyze the fundamental principles on which this Code was written, as follows: the principles of legality, humanism, equality in front of criminal law,

prevention of acts stated in criminal law, crime as the sole ground for criminal responsibility, individuality of criminal responsibility, individualization of criminal law sanctions and the principle of special sanctioning for minor criminals. The presence of such principles in the Romanian Penal Code indicates its release from the influence of Marxist ideology and its affiliation to the thought and language of criminal law in European Union member states.

In the 4th chapter, entitled "Penalties according to Romanian Penal Code", I presented the penalties that the Romanian Penal Code states, treating them both in connection to crimes for which they are administered and individually. I have emphasized since the beginning that penalties are the most important category of sanctions of criminal law.

I have demonstrated that punishment, as it is defined by the Romanian Penal Code, is a means of constraint and reeducation and aims to prevent the perpetrating of new crimes. The new Penal Code introduces a new function of punishment as well: re-socialization, avoiding, as possible, deprivation of freedom, as in detention facilities, populated with convicted criminals, the punishment can no longer fulfill its purpose. This new role of sanction moves the focus of punishment on correcting the personality of the sentenced in order to be able to reintegrate socially.

The implementation of this role of punishment by the new Penal Code does not abolish the coercive role, which remains essential, for without its severity, the "correction of the personality of the sentenced" and the maintaining of social order would be unattainable. Also, means of constraint offer tribunals control over criminals, which is essential for coordinating the process of reintegration in society of those guilty of crimes.

Other two roles of punishment are the exemplarity, which means setting a mandatory model of conduct for all subjects of criminal law, and the social function, aiming to protect society from wrongdoers.

Varying on the role and importance given to penalties, they can be of three kinds: main, complementary and accessory. The first main punishment is life imprisonment, defined in the new Penal Code as "deprivation of freedom for an undetermined period of time" (article 56). This penalty entered the Penal Code through Decree Law no.6 on January 7, 1990, which abolished the death penalty.

The punishment of life sentence is only applied to the most dangerous crimes and is firstly administered as an example and as social protection, in order to prevent further such crimes, as it consists of the deprivation of liberty of the convicted and his removal from society for at least 20 years or the rest of his life. Thus, he no longer has the opportunity to commit new crimes in the free society. Consequently, the main motive behind deprivation of freedom for an undetermined period of time is constraint.

Life sentence detentions are regulated by law 275/2006, completed and amended by law 83/2010, which specifies that detentions for life sentences and for sentences of over 15 years are to be served under conditions of maximum security. Only in extraordinary cases can a person with such a conviction serve the sentence under lower security conditions.

Further, I specified the manner in which life sentences can be replaced, under certain conditions, with sentences on a determined period of time.

Prison sentences for a period of time are the second main penalties according to the Penal Code and are defined as the deprivation of freedom of the convict by placing him in a closed environment, where he is subject to an imposed life and work style.

According to law 275/2006, completed and amended by law 83/2010, such a sentence is served by detainees in different manners, varying on specific conditions of the category of convicts. This classification is made according to sentence length, nature of the crime committed, state of recidivist, receptivity to re-socialization activities, as well as special categories (women, young people, foreigners, patients and other categories of detainees that would require special attention, such as former judges, law enforcement agents, military personnel, etc.)

The fine represents the third penalty mentioned in the Penal Code, and consists of "the sum of money that the convict is required to pay to the state" (according to article 61 of the New Penal Code). Although the punishment of fine is both constraining and afflictive in nature, it is considered to be a lighter sentence, without serious consequences for the convict. By administering this sanction, the convict is not removed from society, his family relations or friendships are not affected and he is not submitted to long-term constraining.

The new Penal Code brings many changes in regulating the sanction of fines. According to the new regulations, the system of fines has two main characteristics – the number of fine-days, which "express the gravity of the crime committed and the level of danger of the criminal", and the value of one day of fine (in currency), representing the sum of money corresponding to it. This can vary from 300 to 200.000 lei.

Another novelty brought by the Penal Code is the possibility of cumulating fine and prison in situations where, through the crime committed, the convict aimed to get a patrimonial use. Moreover, the new Code specifies a new manner to execute punishment for unpaid fines, by replacing their monetary value with "unpaid work in the service of the community", a measure coming to the aid of those who are in impossibility to pay and show "good faith".

The accessory penalty is a supplement to main penalties, such as life sentence or sentence in prison, and consists of the deprival of certain rights which are expressly stated by the legislator, which I analyzed in a critical and objective manner in this thesis. The deprival of such rights ends with the fulfillment of the prison sentence that they accompany. There are certain situations, however, in which accessory penalties are executed without the prison sentence, in one of the following situations: relinquishment of penalty, suspension of sentence, parole, postponement of sentence, pardon or amnesty.

Complementary penalties mentioned in the Penal Code are the deprival of certain rights and military demotion. The complementary punishment of deprival of rights is a restrictive measure against the convict, added to the main prison sentence.

According to regulations of the new Penal Code, the complementary penalty of deprival of certain rights can be added to the punishment of fine, varying on the nature and gravity of the crime, as well as on the circumstances of the cause and the person of the criminal.

Further, I stated that the execution of complementary penalties begins immediately after the convict has been freed from prison sentence or after he receives a definitive sentence to fine.

The second complementary penalty, military demotion, is applicable only to active military personnel and reservists (including retired military staff, according to the new Code) and consists of "the loss of rank and of the right to wear the uniform" for life.

With the entry into effect of the new Penal Code, a new complementary penalty will be introduced – the "publication of the conviction decision". The main reason behind the introduction of this complementary penalty is the prevention of new crimes by public means, with the help of mass-media. Also, the publication of such information regarding the person of the convict brings "moral reparation" to the injured party, especially if the crime was committed through means of mass-media.

Further, I went to analyze the means to individualize sanctions, highlighting the fact that penalty individualization is a fundamental principle of criminal law and criminal accountability, consisting of the adaptation of the sanction to the abstract and actual gravity of the crime and of the person of the perpetrator, so that punishment fulfills its functions and aims as stated by the law with maximum efficiency.

The individualization of penalties is done, according to Romanian criminal law doctrine, in three phases: the elaboration of the law, establishing what punishment must be applied for the specified crimes, the application of the penalty or the decision on the concrete sanction for each crime and the execution of the penalties, by judge's decision. Thus, there are three forms of penalty individualization in Romanian criminal law, corresponding to the three phases: legal, judiciary and administrative individualization.

I have successively analyzed the general penalty individualization criteria, as stated by the new Penal Code: the circumstances and the manner in which the crime was committed, as well as means used, the state of danger caused to the protected value, the reason for committing the crime and the purpose of it, the nature and occurrence of crimes which represent the antecedents of the perpetrator, the conduct after the crime was committed and during penal procedures, the level of education, age, health state, family and social situation.

Further, I made a critical analysis of the attenuating and aggravating circumstances, the conditions in which a relinquishment of penalty, a postponement of sentence, a suspension of sentence execution or probation can be decided, by comparing the regulations of the current Penal Code and the ones of the new Penal Code, entering into effect on February 1, 2014.

The causes which eliminate criminal liability and sentence execution are: amnesty, pardon, prescription, lack of prior complaint, withdrawal of prior complaint and reconciliation.

Through law 278/2006, regulations on penalties for legal persons have been introduced in the Penal Code, after a considerable absence of such institutions from Romanian criminal law. Sanctions applicable to legal persons include one main sanction and five complementary sanctions.

The main penalty is the fine, defined as "the sum of money that the legal person is sentenced to pay to the state" (article 71 of the current Penal Code, article 137, paragraph 1 of the new Penal Code). With regards to the value of the fine, I specified that while the current Penal Code states a minimum and maximum threshold for the fine, the new Penal Code introduces the system of days of fine in the case of legal persons as well. The number of days of fine is decided in court varying on general punishment individualization criteria and the calculation of the corresponding total for one day of fine is based on the turnover, if the legal person is of commercial nature, or varying on the value of patrimonial assets, in the case of other types of legal persons, considering their obligations as well.

With regards to complementary penalties applicable to legal persons, with the exception of cases in which the law expressly states the enforcement of one of them, they are optional. The court decides whether one or several complementary penalties should be applied, only in conditions in which, considering the gravity and the circumstances of the cause, the need for such measures is proved. The complementary penalties are: liquidation of the legal person, the suspension of activity, the closing of certain work points of the legal person, deprival of rights to participate in public acquisition procedures, placing under judicial monitoring and, with the entry into effect of the new Penal Code, the publication of the conviction decision.

I went further to indicate and analyze sanctions mentioned in the Romanian Penal Code for each crime, using the classification of crimes according to the new Penal Code, without neglecting the regulations of the current one.

The current Romanian Penal Code groups crimes into ten categories named titles, which are to be significantly amended with the entry into effect, on February 1, 2014, of

the new Penal Code. Thus, according to the new Penal Code, there are 12 categories of crimes: crimes against person, crimes against patrimony, crimes regarding state authority and frontiers, crimes against justice, crimes of corruption and office, crimes of forgery, crimes against public safety, crimes against social cohabitation, electoral crimes, crimes against national security, crimes against the fighting capacity of the armed forces and crimes of genocide, war and against humanity.

In the last chapter, entitled "Punishment according to the two legislations. A comparative study", I presented the resemblances and the differences between penalties stated by canon law and those stated by the Romanian Penal Code, as well as the manner in which these sanctions fulfill their purpose. Thus, I mentioned from the beginning that both penalties imposed by canon law and those imposed by the Romanian Penal Code, are filled by a significant humanistic spirit. This common characteristic of the two legislations is natural, since at the basis of the promotion of universal values behind universal rights and freedoms of man were the spiritual-religious values of the Ecumenical Orthodox Church and implicitly those included in her canon law. The introduction by the new Penal Code (inspired by European law, centered on human rights and freedoms) of the re-socialization function of the penalty is an uncontested evidence for this, as through this new function, a unity of purpose between the two legislations is achieved – the straightening of the wrongdoer's behavior.

Another common characteristic of such penalties is the connection between the crime and the penalty. According to both legislations (canonic and Romanian penal), the penalty does not have a merely formal character, but the gravity of the crime is proportional to the punishment, with certain special limits that must be respected.

Sanctions administered by Orthodox canon law are different from those applied by the Romanian Penal code and state legislation in general. This difference, of content and of consequences, is firstly owned to the fact that the Church is a divine-human institution, and the purpose of her legal sanctions is not punitive or vindictive in nature, but for straightening, for the culmination of the victory of virtue over sin, implying an act of awareness of the one who breached Christian moral law on the consequences of sin and the healing role of his punishment.

According to Romanian penal code, all penalties are afflictive, causing suffering, with the sentenced being forced to undergo deprivations and restrictions as stated by the sanction, not only in educational purposes, but also as a response to his dangerous conduct by which he breached criminal law. In the Church any crime is firstly judged as sin, and according to its gravity, the gravity of the crime is assessed. Sin means first of all a violation of divine judgment and imposes responsibility not towards civil tribunals, which can be corrupted or deceived, but towards divine authority.

With regards to the terminology used, Orthodox canon law doesn't have a "sole, common and general" name for an illicit deed, but has borrowed from secular civil law notions such as lawlessness, breach of law, ecclesiastical crime, contravention, offense, misconduct, etc.

Naturally, in my conclusions I aimed to highlight the results of my research and the ideas that have guided me in writing the thesis, emphasizing once more the scientific contribution of this research project to Romanian judicial and canon law literature.

In the pages of conclusions the reader can see not only the results of a long-term scientific research, but also the contribution that I managed to bring in the two areas regarding the subject covered.

These observations allow me to state that both Romanian criminal law and Romanian canon law still need certified researchers and experts to cover a vast area of knowledge both from the field of Roman and Byzantine Law, and from that of Theology and Canon Law. Naturally, there are few cases in which the researcher who covers such a scientific mission meets all criteria. But, in my case, considering that I have both theological-canonical and judicial-law education, I allowed myself to venture on this scientific mission and to write a thesis which has the gift to bring a worthy contribution to the comparative assessment of the two fields – Canon Law and Romanian Penal Code. Aware of this, I will continue my scientific initiative regarding the covered subject, based on the desire to establish a reference work for canon law experts, theologians and jurists in our country.

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