

## **The enforcement of the fine punishment according to the stipulations of the New Code of Criminal Procedure**

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***Abstract:** The new criminal and procedural legislation that entered into force on the first of February, 2014 has brought substantial modifications to criminal law institutions, including matters regarding the enforcement of the criminal judgments. The provisions governing the enforcement of the criminal fine are also under the scope of these modifications. Regarding the enforcement of the criminal judgments (as the last phase of the criminal trial), the recent modifications brought by the New Code of Criminal Procedure are correlated with the modifications brought in criminal matters by the New Criminal Code. The legislator aimed, on one side, to introduce in the New Code of Criminal Procedure some stipulations that are corresponding with the new institutions regulated by the New Criminal Code (for example, the complementary punishment of displaying or publishing the decision of conviction, the postponement of enforcing the punishment, the replacement of the fine punishment with performing unpaid work for the benefit of the community), and on the other side, the removal of the institutions that do not have a correspondent in the New Criminal Code (for example, the stipulations regarding the execution of the punishment at the work place, or those regarding the replacement of the criminal liability). Regarding the enforcement of the fine punishment, we can observe that, on the one hand, the stipulations of the Criminal Procedure Code are being supplemented with the provisions of the Law nr. 253/2013, and on the other hand, corresponding with the introduction in the New Criminal Code of the stipulations regarding the execution of fine punishment, by performing unpaid work for the benefit of the community, was necessary also to regulate the procedure of replacing this punishment, procedure that is regulated in detail in the New Code of Criminal Procedure. In conclusion, although perfectible, the New Code of Criminal Procedure and the normative acts that are adjacent to it bring the long waited reform, which was necessary in order to synchronize our criminal-procedural legislation with the European standards, in a coherent system.*

***Keywords:** New Criminal Code; New Code of Criminal Procedure; criminal fine; punishment; replacing punishment.*

### **Introduction**

Regarding the enforcement of the criminal judgements (as the last phase of the criminal trial), the modifications brought by the New Code of Criminal Procedure (NCCP) [1] are correlated with the new criminal regulations brought by the New Criminal Code (NCC) [2]. The aim of the legislator was to introduce in the NCCP provisions that are corresponding with the new legal institutions that are being regulated by the NCC (for example, the complementary punishment of displaying or publishing the criminal fine, delaying the enforcement of the punishment, replacing the criminal fine with community service work) and, on the other side, to remove the legal institutions that don't have a correspondent in the NCC (for example the regulations regarding the execution of the punishment at the work place, the regulations regarding the execution of punishment by the military personnel or the replacement of the criminal liability).

In terms of the main punishments, the NCC has a more flexible approach compared with the previous regulations. We can observe a growth in the number of crimes that are punishable by fine and, simultaneously, a reduction of the limit of punishment for a large number of crimes but also, a more severe sanctioning of the

recidivism and in the cases where there are a series of offenses. The doctrine [3] had already been emphasizing the fact that the fine has the tendency of becoming a “pivot that maintains the entirety of the repressive system” in the modern law systems. Unlike the former regulation, the NCC gives a definition not only to the fine punishment, but also for the other main criminal punishments. The provisions from the NCC regarding the fine are significantly influenced by the European legislation in this field. The definition that the art. 61 paragraph (1) of the NCC offers is similar to the previous regulation. The fine is the sum of money that the convict has to pay to the state. As a novelty however we can observe that the amount of the fine is being established by using the system of day-fine. The amount of a day-fine is between 10 lei and 500 lei and it multiplies with the number of the days (between 30 and 400 days). The court will be able to individualize the punishment, taking into consideration, when establishing the amount for each day of fine, the financial situation of the convict and also of his/hers legal obligations towards the persons that are in his/hers legal care. As a novelty element, the prohibition of exercising certain rights can be ruled by the court not only alongside the punishment of imprisonment, but also alongside the fine punishment. According to art. 67 of the NCC, the complementary punishment of prohibiting the exercise of certain rights can be enforced if the main punishment is imprisonment or the fine.

Also, the new regulations aim to achieve equilibrium between the respect towards the rights of the persons that are convicted, or against whom the judicial bodies have ruled the taking of criminal law measures, and the necessity of simplifying and accelerating the procedures [4]. In this respect, the law introduced a specific way of appeal against the execution of punishment - the contestation; the rulings pronounced by the first instance regarding the execution of the penalty, can be appealed with contestation at a superior court, within 3 days from the notification. Also, the NCCP eliminates the provisions that were granting alternative competence to more than one court, in an unjustifiable manner, keeping the exclusive competence of some courts, so that the transport of the inmates from the detention place to the courts from another circumscription will not be necessary; some of these modifications became active, as regulated by the Law nr. 202/2010 [5] even before the NCCP entered into force.

At the same time, the NCCP no longer maintains the regulations that have caused some controversies in the legal practice, for example the regulations regarding any incident that may arise during the execution of the punishment. The Code also removes some stipulations that no longer correspond to practical realities, such are those regarding the postponement or the interruption of the execution of punishment based on familial reasons, institution that was not justified by the decisions pronounced by the courts, being dismissed in most of the cases; NCCP also takes into account the changes in organisation of the National Administration of Penitentiaries, that allow the conducting of some activities by the inmates inside the detention place, or their displacement, based on a simple administrative stipulation, outside the detention place, in some special circumstances [6].

### **1. The executory character of the criminal judgements**

In contrast to the civil judgements, that must be invested with a writ of execution, *in the criminal law the definitive court judgments are enforceable by law*, as they are enforced *ex officio* by the competent bodies. This characteristic is in fact a defining feature for all public law, as opposed to private law where the principle of availability was consecrated.

According to art. 550 para. (1) of the NCCP, the rulings of the criminal courts become enforceable at the date when they are final. The definitive criminal ruling has force of *res judicata*, meaning it is considered as the expression of truth in the case that was brought before justice (*res iudicata pro veritate habetur*) and another trial against the same person, regarding the same deed becomes impossible (*non bis in idem*).

The doctrine [7] has argued that the principle of *res judicata* of the definitive criminal rulings has two effects:

- a positive effect, which allows the enforcement of the court ruling, and
- a negative effect, consisting in the prevention of another trial against the same person, regarding the same deed.

Art. 16 of the NCCP consecrates the negative effect of the *res judicata*, amongst the causes that prevent the set in motion or the pursuit of the criminal action.

As an exception from the rule according to which the criminal rulings become enforceable starting at the date when they become definitive, art. 550, para. (2) of the NCCP states that the rulings which are not definitive become enforceable when the law stipulates such a measure. The Code refers to certain rulings that may be appealed against, for example the contestation, but which don't suspend the enforcement (for example, the ruling of the first instance court that suspends the trial - art. 367 of the NCCP or the ruling by which, during the trial, a preventive measure is being taken or maintained or terminated - art. 206 of the NCCP).

## **2. The moment when the criminal court rulings become final**

As presented earlier, the criminal rulings usually become enforceable at the date they become definitive. This is why this moment presents a great importance.

The law (art. 551-552 of the NCCP) stipulates different moments, according to the degree of jurisdiction, meaning whether if it comes to the ruling of the first instance court or the appeal ruling, respectively to the ruling pronounced in the appeal of the contestation.

***The rulings of the first instance court become definitive*** (according to art. 551 of the NCCP):

1. at the date of the pronouncement, when there cannot be appeal or recourse against the ruling;
2. at the deadline set for appealing or introducing the opposition:
  - a) when there was no appeal or opposition;
  - b) when the appeal or the opposition was withdrawn;
3. at the date when the appeal or the opposition is withdrawn, if this occurred after the deadline set for the appeal or contestation;
4. at the date of the pronouncement of the ruling that has dismissed the appeal or the opposition;

***The ruling of the appeal instance and the decision pronounced in the contestation are definitive*** (according to art. 552 NCCP) at the date of the pronouncement as follows:

- the ruling of the appeal court remains definitive at the date of its pronouncement, when the appeal was admitted and the trial has ended before the appeal court;
- the ruling pronounced in opposition remains definitive at the date of its pronouncement, when the opposition was admitted and the trial ended before the court that judges the opposition;

## **3. The court that is enforcing the criminal fine**

The enforcement of the criminal rulings is an attribute of the court. The court competent in executing the ruling is the first instance court. In this respect, art. 553 of the NCCP states that the ruling of the criminal court that remains definitive before the first instance court or before the hierarchically superior instance or before the appeal instance is enforced by the first instance court.

The rulings pronounced by the High Court of Cassation and Justice are enforced, as applicable by the Tribunal of Bucharest or by the military tribunal.

When the ruling becomes final before the instance of appeal or before the hierarchically superior instance, as appropriate, an excerpt of the ruling, containing the necessary informations for enforcement, will be sent to the executing court, at the day when the ruling is pronounced by the appeal court or by the hierarchically superior instance.

These stipulations will be applied to the cases when the rulings are not definitive but they are enforceable, excepting those regarding precautionary or preventive measures, as they are enforced, as applicable, by the rights and obligations judge, by the judge of the Preliminary Chamber or the court that has ruled such measures.

When the ruling of the appeal court has been modified by a decision of the High Court of Cassation and Justice, pronounced in recourse in cassation, the High Court of Cassation and Justice will send an excerpt of the ruling, with the necessary information for its enforcement, to the executing court, at the day of the pronouncement.

In the case of the non-custodial measures and sanctions, the judge delegated with the executing from the executing court can delegate some attributions to the judge delegated with the executing from the court with a corresponding rank with the executing court, in the circumscription where the person that is executing the punishment resides.

As stated in the doctrine [8], in order to enforce the criminal rulings, the court uses a graceful way and only the enforcement incidents are resolved by the contentious. According to art. 554 para. (1) of the NCCP, the executing court delegates one or more of its judges in order to put the decision into execution.

In the event that, at the enforcement of the criminal rulings or during the enforcement, any further questions or an impediment to the enforcement arise, the judge delegated with the enforcement may notify the executing court that will act according to the stipulations of art. 597 and 598 (meaning it will resolve the enforcement incidents according to the stipulations regarding the procedure before the executing court). We can notice that the law (art. 554 para. 2 of the NCCP) does not stipulate the obligation, but only the possibility that the judge has to notify the executing court; the scientific literature [9] has argued that the aim of this stipulation is to give the delegated judge the possibility to personally find a solution to such incidents or impediments to the enforcement of the judgement.

#### **4. The procedure before the court that is enforcing the punishment**

During the procedure of executing the definitive ruling, as well as during the actual executing of the dispositions contained by the court ruling, the executing court holds the main part in resolving the incidents that may occur [10].

Art. 597 of the NCCP regulates general provisions regarding the procedure that is being applied by the executing court in resolving the matters regarding the executing the definitive criminal rulings.

Mainly, if these rulings are not contrary to the stipulations regarding the enforcement, all the provisions regarding the trial apply accordingly in this phase of the criminal trial.

The presiding judge will rule on the citation of the interested parties and, in cases when juridical assistance is compulsory, takes measures to designate a lawyer ex officio. At the trial of the cases of suspending the execution of the imprisonment or of the life imprisonment, the administration of the penitentiary, where the inmate is executing his punishment, will also receive a citation.

The inmate or the person that is being hospitalised in an educative facility is brought to trial. The participation of the prosecutor to the trial is compulsory.

After hearing the conclusions of the parts and of the prosecutor, the court will pronounce the sentence.

Same procedure will be applied when the court from the circumscription of the detaining area is competent. In this case the sentence will be communicated to the executing court.

The executing sentences pronounced by the first instance court, can be contested at the hierarchically superior court, in 3 days from its communication.

The trial of the contestation of the ruling of the first instance court will be public, with the citation of the condemned person. The inmate or the person that is being hospitalised in an educative facility is brought to trial. The participation of the prosecutor to the trial is compulsory. The decision of the court regarding the opposition to the enforcement is definitive.

#### **5. The opposition to the enforcement of the punishment**

The opposition to the enforcement was defined, in the doctrine [11], as a jurisdictional procedure of solving the claims or the complaints generated by the executing of the criminal judgements.

According to art. 598 para. (1) of the NCCP, the opposition against the execution of the criminal judgements can be accepted in the following situations:

- a) When the judgement being executed was not definitive;
- b) When the executing of the punishment was directed towards a different person than the one stipulated in the conviction;
- c) When an uncertainty or an impediment arises regarding the judgement that is being executed;

d) When amnesty, prescription, the pardon or any other cause of extinguishing or diminishing the punishment is being invoked;

In order for the opposition to be admissible, as stated by art. 461, letter d) the NCCP, the situations that the law refers to (amnesty, prescription, the pardon etc.) must occur during the executing of the punishment. Thus, the judicial practice [12] has rejected the opposition to the executing of the punishment invoked for misinterpreting, by the first instance court, of the legal stipulations regarding amnesty.

The court competent to solve the opposition for the cases stipulate by letters a) and b) is the executing court or the court from the circumscription area of the detaining place, and for the case stipulated by letter c), the court that has pronounced the sentence that is being executed. In the case when the uncertainty arises regarding a sentence pronounced in appeal or in recourse in cassation, the court of appeal or the High Court of Cassation and Justice is competent, as appropriate. According to the art. 599 of the NCCP, the procedure of solving the opposition is the one regulated by art. 597, specifically the procedure before the court that is enforcing the punishment.

In the situation stipulated by art. 598 para. (1) letter d) of the NCCP, if the judgement that is being executed does not contain the data and the situations that are fundamental for the solving of the opposition, this fact will be established by the court that is competent to trial the opposition.

The request can be withdrawn by the condemned person or by the prosecutor, in the situation when he is the one that formulated it.

After the pronouncement of the definitive sentence as a result of admitting the opposition, a new procedure of enforcing will begin, accordingly with the procedures of the present title.

Subsequently requests of opposition to the executing of the sentence are inadmissible if there is an identity regarding the person, legal grounds, reasons and defences.

When the opposition refers to the executing of civil aspects of the sentence, it will be made at the executing instance or at the instance from the circumscription were the detaining place lies or were the condemned person is executing his punishment (for the cases stipulated by art. 598 para. 1 letters a. and b.), or at the court that has pronounced the sentence that is being carried out (for the cases stipulated by the art. 598 para. 1 letter c.). The opposition against the execution is judged by the civil court, accordingly with the regulations of the civil law (art. 600 of the NCCP).

In the situation when the opposition is against the executing of a criminal fine, it will be solved accordingly with the art. 601 of the NCCP, by the court that enforced the payment of the fine.

## **6. The enforcement of the fine punishment**

### **6.1. The procedure of enforcing the fine punishment**

The fine punishment, as a main punishment form [13] is being enforced by the payment of a sum of money by the convicted person. The law states (art. 559 para. 1 of the NCCP) that the person convicted to pay the fine is forced to depose the receipt of full payment at the judge that is delegated with the enforcement, in 3 months from the moment the sentence becomes final.

Similarly, art. 22 para. (1) of the Law nr. 253/2013 [14] states that a person convicted to the enforcement of the fine is forced to fully pay the fine in 3 months from the moment the sentence becomes final and to communicate to the judge delegated with the enforcement of the fine the receipt of full payment, inside the legal term of 15 days following the payment.

In the situation when, the convicted person does not have the possibility to fully pay the fine within 3 months since the sentence becomes final, at his request, the judge can rule on the rescheduling of the payment within 2 years, at the most, in monthly installments (art. 559 para. 1 of the NCCP).

### **6.2. Replacement of the penalty of fine**

Accordingly with the introduction in the NCC (Law nr. 286/2009) of the provisions regarding the enforcement of the fine punishment by providing unpaid community work (art. 64), the NCCP also contains provisions regarding this aspect.

Art. 64 para. (1) of the NCC stipulates that, in the cases when the fine punishment cannot be enforced partially or in its entirety, for reasons not imputable to the convicted person and with his consent, the court can replace the obligation of paying the fine with the obligation to provide unpaid community work, excepting the situation when, because of the health condition the convicted person cannot provide such work. The correspondent of a day-fine is a day of unpaid community work.

According to the provisions of art. 560 NCCP, *the court competent to order the replacement of the obligation to pay the fine with the obligation to provide unpaid community work is the executing court.*

The notification of the court is made *ex officio* or judicial body that, as the law provides enforces the fine or the convicted person. When the replacement of the enforcement of the fine with unpaid community work is ordered, the court will mention, two entities that are part of the community, where the community work will be carried out. The probation advisor, based on an initial evaluation, will decide in which of the two institutions from the community, mentioned in the court order, the community work will be provided and the type of activity.

The obligation to provide unpaid community work will be enforced by sending copies of the court order to the probation service.

Art. 64 para. (5) of the NCC states that the court replaces the day-fines that are not provided by working in the benefit of the community with jail time if:

- a) the convicted person does not provide work in the benefit of the community as ordered by the court;
- b) the convicted person commits a new crime uncovered before the sentence to work in the benefit of the community was carried out. The day-fines that are not executed until the definitive conviction date, replaced by jail time are being added to the punishment for the new crime.

In the former regulation, the replacement of the fine punishment with imprisonment was only possible when the punishment of imprisonment was stipulated alternatively with the punishment of fine and not in the situations when the fine was the only punishment and also, only if the court has ordered the fine not as an effect of the attenuating circumstances, but by choosing to enforce the fine as alternative punishment [15].

The provisions of art. 64 do not apply to crimes committed before the entry into force of the NCC, not even in the cases when the fine was enforced based on art. 61.

Art. 561 of the NCCP regulates the procedure of replacing the punishment of providing unpaid community work with imprisonment. Thus, the court that is competent, according with art. 64 para. (5) letter a) of the NCC, the replacement of the work in the benefit of the community with imprisonment is the executing court, and in the case stated by art. 64 para. (5) letter b), is the court judges in first instance the crime committed before the complete execution of the punishment of providing unpaid community work.

The notification of the court is done *ex officio* or by the judicial body that, according to the law, is ordering the enforcement of the fine or by probation service.

The enforcement of the court order is made according with the stipulations regarding the procedure of the enforcement of imprisonment punishment.

Art. 63 para. (1) of the NCC states that, if a convicted person, with malicious intent, does not comply with the enforcement of the fine, partially or in its entirety, the number of day-fines that are not executed is being replaced with a correspondent number of jail time days.

If the fine (that was not executed) was ordered alongside imprisonment, the number of unexecuted day-fines is replaced with a correspondent number of jail time days (art. 63 para. 2 of the NCC).

Accordingly with these stipulations of the NCC, the NCCP (art. 586) contains provisions regarding the procedure of replacing the fine punishment with imprisonment. This way, the executing court is competent to replace the fine punishment with imprisonment. The notification of the court is made *ex officio* or by the judicial body that, according with law, is executing the fine.

The convicted is cited at the judgement of the notification, and if he does not have a lawyer the court will appoint one of its own motion. The convicted person will be brought to the trial.

The order to replace, that is final, will be enforced according to the stipulations regarding the enforcement of the imprisonment. In the situation when the fine has accompanied the imprisonment punishment, a new warrant of execution will be ordered for the punishment, as stipulated by art. 63 para. (2) of the NCC.

If the convicted person pays the fine during the solving of the case, the notification will be considered unfounded.

In conclusion, as shown by art. 23 of the Law nr. 253/2013, in the case when the fine punishment is not carried out, the judge delegated with the enforcement will notify the executing court, which will proceed as follows:

- when it ascertains that the convicted person is not guilty for the failure to enforce the fine, it will order the convicted to provide unpaid work in the benefit of the community, excepting the case when the convicted is unable to perform such work, due to his health situation;
- when it ascertains that the convicted person is not guilty for the failure to enforce the fine and the convicted does not agree to provide unpaid work in the benefit of the community, the court will replace the fine with imprisonment;
- when it ascertains that the convicted person is guilty for the failure to enforce the fine, the court will order the replacement of the fine with imprisonment;

In order to establish the reasons that have led to the failure in enforcing the fine punishment, the court will solicit data regarding the financial situation of the convicted person, from the local administrative authority of his domicile and, if the court considers it is necessary, from the employer or the financial bodies of the National Agency of Fiscal Administration, as well as other authorities or public institutions that hold information regarding the financial situation of the convicted person.

### **Conclusions**

New criminal and criminal procedural legislation such as: Law nr. 286/2009 regarding the Criminal Code, Law nr. 135/2010 regarding the Code of Criminal Procedure, Law nr. 187/2012 for the enforcement of the Criminal Code [16], Law nr. 255/2013 for the enforcement of the Code of Criminal Procedure [17], Law nr. 253/2013 regarding the enforcement of punishments, educative and non-custody measures ordered by the judicial bodies during the criminal trial, Law nr. 254/2013 regarding the enforcement of punishments and of custody measures ordered by the judicial bodies during the criminal trial [18], that entered into force at 1 of February 2014 has brought significant changes to the institutions of criminal law and criminal procedural law, including in matters related to the enforcement of the criminal judgements. Under the incidence of these modifications there are provisions that regulate the enforcement of the fine punishment.

In contrast to the systematization provided by the Criminal Procedural Code from 1968, where the enforcement of criminal judgement was carried out according with Title III (before Title IV –“Special procedures”), in the structure of the Criminal Procedural Code now in effect, the stipulations regarding the enforcement of the criminal judgements was included in Title V (art. 550-601), after the regulation of the special procedures. It is truth, that the enforcement of the criminal judgements represents in fact the last phase of the criminal trial (the fourth one according to the NCCP), however, taking into consideration the fact that even the special procedures contain derogatory provisions regarding the enforcement (for example regarding the procedure of prosecuting the juridical person), the systematization of the former Code of Criminal Procedure from 1968, was more natural, as derogatory norms were placed after the common norms, including in matters related to the enforcement of the criminal judgements.

Regarding the enforcement of the fine punishment, we can observe that, on one side, the provisions of the Code of Criminal Procedure are being completed with the stipulations of the Law nr. 253/2013, and on the other hand, accordingly with the introduction in the NCC of the stipulations regarding the enforcement of the fine punishment by providing unpaid community work, was also necessary to regulate the procedures of replacing this punishment, regulation presented in detail in the NCCP.

In conclusion, although perfectible, the New Code of Criminal Procedure and the normative acts adjacent to it are bringing the long waited reform, that was necessary in order to harmonize our criminal-procedural legislation with the European standards in a coherent system.

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