

SPECIAL PROCEDURE REGARDING THE CRIMINAL LIABILITY OF A JURIDICAL PERSON

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Abstract

According to the regulation from the Criminal Procedure Code for the criminal liability of the juridical person and in the Criminal Procedure Code there exist some provisions concerning the procedure to hold liable a juridical person. Representing a different way to develop the criminal process than the usual procedure, made of a complex of standards with a complementary and derogatory character, the procedure to hold liable a juridical person represents a special procedure. The present study aims an analysis of this procedure. Besides the systematization from the Criminal Procedure Code from the 1968, in which special procedures made the object of the last title of the Special Part (Title IV) in the structure of the actual Criminal Procedure Code the regulation of special procedures precedes the provisions regarding the execution of decision, provisions that are contained in the final title of the Special Part. It is true that the enforcement of decisions represent the last step of the criminal process, but, taking into account the fact that in special procedures as well one can contain some derogatory standards regarding the enforcement (including regarding the procedure to hold liable a juridical person), more adequate was the systematization from the previous Criminal Procedure Code (from 1968) where derogatory standards were situated after standards of common law, including in the matter of enforcement.

Keywords: juridical person, criminal liability, special procedure, Criminal Procedure Code, Criminal Code

JEL Classification: K14

1. Introductory considerations regarding special procedures

The criminal provisions based on which, usually one solves a criminal cause represents a common procedure; in some cases, due to the quality or age of the accomplice (juridical or minor person) or the fact that one aims the solving only of some adjacent aspects of the fund of the cause, and one imposes some derogations from the usual procedure, by the institution of some special procedures.

Special procedures can be defined as ways to develop the criminal process different from the usual procedure, constituted from a complex of standards with complementary and derogatory character, what supposes that, in the case of their application, the criminal process is developed according to common standards only in the measure in which there are some special provisions which have a priority².

Special procedures have been classified in the juridical literature³ according to many criteria.

a) So, according to the object of criminal causes which fall under the incidence of special procedures, these one can be: special procedures and auxiliary special procedures.

- Proper *special procedures* are the ones by which one solves some aspects regarding the procedure to hold liable the persons who produce criminal offences. This category includes: the procedure to hold liable a juridical person, the respective procedure with minor criminal offenders, the procedure applicable after the admission of the agreement of guilt ascertainment.

- Auxiliary special procedures are the ones that have as an object some aspects which are adjacent to the main procedural juridical report; here are included: the contestation regarding the duration of the criminal process, the procedure of pursuit, the procedure of rehabilitation, the procedure of re defense of the material damage or of the moral damage in case of a juridical error or in case of illegal deprivation of liberty, the procedure in case of disappearance of juridical files or of juridical written instruments, the procedure regarding the cooperation in the matter of

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² Grigore Theodoru, Lucia Moldovan, *Criminal procedural law*, Publishing House Didactica si Pedagogica, Bucharest, 1979, p. 335

³ Ion Neagu, *Criminal Procedure Treaty*, Publishing House PRO, Bucharest, 1997, p.694; Nicolae Volonciu, *Criminal Procedure Treaty, Special Part* vol.II, Publishing House Paideia, Bucharest, 1994, p.442.

international juridical cooperation, the procedure of seizure or cancellation of a written instrument in case of classification.

b) According to the source or to the normative standard in which these are regulated, special procedures can be divided in: procedures stipulated by the Criminal Procedure Code and procedures stipulated in some special laws.

- In the Criminal Procedure Code one regulates the majority of special procedures (the agreement of ascertainment of guilt, the contestation regarding the duration of the criminal process, the procedure regarding the means to hold liable the criminal liability of a juridical person, the procedure in causes with minor offenders, the procedure of pursuit, the procedure of rehabilitation, the procedure of re defense of material damages or moral damages in case of juridical error or in case of illegal deprivation of liberty, the procedure in case of disappearance of juridical files and of juridical written instruments, the procedure of seizure or cancellation of a written instrument in the case of classification) including the general provisions regarding the international juridical cooperation and the enforcement of criminal matter treaties.

Regarding the special procedures regulated by the New Criminal Procedure Code, compared to the previous regulation a new procedure is being introduced - the agreement for the ascertainment of guilt and one brings some modifications to the procedure regarding the criminal liability of a juridical person, procedure in causes with minor offenders, procedure for the rehabilitation and procedure for the re defense of the material damage or the moral damage in case of juridical error or in case of illegal deprivation of liberty or in other cases.

- There are also some special procedures regulated *by special laws* : the procedure of extradition, the procedure of delivery on the basis of an European Arresting Mandate, international juridical assistance in criminal matter and other forms of international juridical cc criminal matter (Law no.302/2004)⁴). As well, regarding the international juridical cooperation in criminal matter, the frame regulation is included in the Criminal Procedure Code (general provisions regarding the international juridical assistance and ascertainment of some foreign juridical documents), in the forms of international juridical cooperation in criminal matter and which are regulated by Law no.302/2004.

2. The need of the special procedure to hold liable a juridical person

In a corresponding manner to the regulation⁵ of the criminal liability in the Criminal Code for juridical persons (Title VI of the General Part: art.135-151 Criminal Code⁶), and in the Criminal Procedure Code there are some provisions regarding the procedure for the criminal liability of the juridical person (Chapter II of Title IV of the special Part: art.489-503 of the Criminal Procedure Code⁷).

So, according to art.135 paragraph 1 of the Criminal Code, the juridical person, except the state and public authorities, has a criminal liability for offences produced in the achievement of the object of activity or in the interest or in the name of the juridical person.

Public institutions do not have a criminal liability for offences produced in the exercise of an activity that cannot make the object of the private field.

The Criminal liability of the juridical person does not exclude the criminal liability of the physical person who has contributed to the production of the respective action.

Punishments that can be applied to juridical persons are, as it comes out from art.136 of the Criminal Code, of two types: principal and complementary. The main punishment is a fine, and

⁴ Law no.302/2004 regarding the international juridical cooperation in criminal matter, republished in the Official Journal no.3777 of the 31st of May 2011 with ulterior modifications and supplements.

⁵ The provisions regarding punishments applicable to juridical persons have been introduced in the Criminal Code from 1968 by Law no.278/2006 published in the Official Journal of the 12th of July 2006; in a great measure these provisions have been overtaken as well in the new Criminal Code.

⁶ Law no. 286/2009 regarding the Criminal Code, published in the Official Journal no.510 of the 24th of July 2009 with ulterior modifications and supplements.

⁷ Law no.135/2010 regarding the Criminal Procedure Code, published in the Official Journal no.486/of the 15th of July 2010, with ulterior modifications and supplements.

complementary punishments are: dissolution of the juridical person, suspension of the activity or one of the activities of the juridical person for a duration from 3 months to 3 years, enclosure of some working points of the juridical person for a duration from 3 months to 3 years, interdiction to participate in the procedures for public procurements for a duration from 1 to 3 years, situation under juridical surveillance, posting and publication of the conviction decision.

Regarding the procedure of criminal liability of the juridical person, the provisions of the Criminal Procedure Code apply in a corresponding manner with supplements and derogations stipulated in art.490-503 and in the case of offences produced by juridical persons stipulated in art.135 paragraph 1 Criminal Code. As well they are applicable in the procedure of criminal liability of juridical persona and of the provisions of the preliminary chamber procedure which is applied in corresponding manner (art.489 of the Criminal Procedure Code).

In some other words, in case of offences produced by juridical persons one will apply the common standard, with supplements and derogations of the special procedure

The specificity of punishments applicable to juridical persons and for offences that can be produced by a juridical person justify the instruction of a special procedure regarding the criminal liability of the juridical person.

Reported to the manner in which one can classify special procedures, the special procedure regarding the criminal liability of the juridical person represents a special procedure regulated by the Criminal procedure Code.

Compared to the Criminal Procedure Code from 1968 the new code regulates in a distinct manner the representation of the juridical person and does not contain special provisions regarding the territorial competence of juridical organisms in case of offences produced by juridical persons, and this competence will be established according to rules of the General Part.

Taking the measure of preventive measures against the juridical person during the course of the criminal pursuit, represents the competence of the judge of rights and liberties, and the inferior limit of the caution is raised to 10 000 lei.

As well, as new element, one has introduced contestation, as a mean of attack against the enclosure of the judge of rights and liberties, the preliminary chamber judge or of the court regarding the taking of one or more preventive measures, establishing the limit in which the juridical person or the prosecutor can exercise this attack mean⁸.

3. Criminal pursuit and judgment of the juridical person

3.1 Object of the criminal action against the juridical person

The criminal action exercised against juridical persons who have produced some offences has an object the criminal liability of these ones.

3.2 Representation of the juridical person

At the production of these procedural and procedural actions, the juridical person is represented by its legal representative.

If for the same action or for connexed actions one has put into movement a criminal action and against the legal representative, the juridical person will assign an attorney-at-law, and this one will be assigned, according to the case, by the prosecutor who performs and surveys the criminal pursuit, by the preliminary chamber judge or by the court among practitioners in insolvency, certified according to law.

Practitioners in insolvency assigned according to law apply, in a corresponding manner, the provisions from the General Part of the Criminal Procedure Code according to amounts agreed with title of juridical expenses (have the right for the restitution of transportation expenses, maintenance, habitation or any other necessary expenses, appeared at their summoning at the juridical organism, have the right to a retribution for the accomplishment of the given assignment, etc.).

⁸ The exposure of reasons to the project of the new Criminal Procedure Code, www.just.ro

3.3 Summoning place of the juridical person

The juridical person is being summoned at the registered office of this one; if the registered office is a fictive one or if the juridical person does not function at the declared registered office and the new registered office is not known, one will post a notification at the registered office of the juridical organ, according to the provisions from the General Part of the Criminal Procedure Code.

If the juridical person is represented by an attorney-at-law, the summoning is made at the residence of the attorney-at-law or at the registered office of the practitioner in insolvency assigned as an attorney-at-law.

3.4 Preventive measures and insurant measures that can be taken against the juridical person

Against the juridical person one can take the following preventive measures:

- a) interdiction of initiation or according to the case, the suspension of the dissolution procedure or liquidation of the juridical person;
- b) interdiction of initiation or, according to the case, suspension of merger, of division or reduction of the capital stock of the juridical person, started anterior or during criminal pursuit;
- c) interdiction of some patrimonial operations susceptible to involve the diminution of the patrimonial active or insolvency of the juridical person;
- d) interdiction of the enclosure of certain juridical documents, established by the juridical organ;
- e) interdiction of the development of activities of the nature of the ones for which the offence has been committed.

It is observed that compared to the previous regulation (from the Criminal Procedure Code from 1968), one has also added the possibility to forbid the initiation of the procedure of dissolution or liquidation of the juridical person, respectively to forbid fusion, division or reduction of the capital stock of the juridical person, as preventive measures.

In order to dispose one or more of the preventive measures stipulated by law, one has to fulfill the following conditions:

- there are grounded reasons that justify the reasonable supposition that the juridical person has committed an action stipulated by criminal law;
- and only in order to ensure the good development of the criminal process.

Competent organs to take preventive measures are: the judge for rights and liberties (during the criminal pursuit, at the proposal of the prosecutor) the judge of preliminary chamber (in the procedure of preliminary chamber) and in the court (during judgment).

In order to ensure the observance of preventive measures disposed, the juridical person can be obliged to submit a caution consisting of an amount of money that cannot be less than 10 000 lei; caution is being reimbursed on the date of the final and definitive conviction decision, by delay of application of the punishment, for the cancellation of the application of the punishment or for the termination of the criminal law suit, given in the respective cause, if the juridical person has observed the measure or the preventive measures, as well as in the case in which, by a definitive decision, one has disposed the release of the juridical person.

Caution is reimbursed in the case of non observance from the part of the juridical person of the measure of other preventive measures, making a revenue to the state budget on the date of the final and definitive decision given for the cause, as well as if one has disposed the payment by caution, in the following order, of money damages given for the repair of damages caused by the offence, of juridical expenses or of the fine.

The duration of the preventive measures is of maximum 60 days, with the possibility to extend them in case of criminal pursuit, and to maintain them during the course of the procedure of preliminary chamber, if the grounds that have determined these measures are maintained and each extension cannot overpass 60 days.

During the criminal pursuit, preventive measures are disposed by the judge for rights and liberties by a motivated enclosure given by the council chamber with the summoning of the juridical person, the participation of the prosecutor being compulsory. Against the enclosure one can submit a contestation to the judge of rights and liberties, or according to the case, to the judge of preliminary chamber or the superior court, by the juridical person or by the prosecutor, in term of 24 hours from the decision, for the present ones, and from the communication for the juridical person that is missing.

Preventive measures are cancelled by the judge of rights and liberties at the request of the prosecutor or of the juridical person, and by the preliminary chamber judge and by the court or from the office, only if one ascertains that there are some justified reasons to justify the undertaking and the maintenance of these ones.

The undertaking of preventive measures does not hinder the taking of insurant measures. In this sense, against the juridical person one can take some insurant measures (seizure, attachment), according to the provisions of the General Part of the Criminal Procedure Code, in order to avoid hiding, destruction, alienation or running away from pursuit of assets that can make the object of special seizure or of extended seizure, or that can serve for the guaranteeing of the execution of the punishment with a fine or of juridical expenses or of the repair of the damage produced by the offence

3.5 Information procedure

The law regulates an information procedure between the juridical organ, the organ that has authorized the registration of the juridical person, the organ that has registered the juridical person and the juridical person.

In this way, the prosecutor, during criminal pursuit, communicates to the organ that has authorized the registration of the juridical person and of the organ that has registered the juridical person, the commencement of the criminal pursuit, the putting into movement of the criminal action and the sending to court of the juridical person, in order to perform the corresponding measures. In the case of institutions that are not meant for the condition of registration or authorization in order to acquire a juridical personality, the information can be made by the organ that has registered the respective institution. As well, this has to be communicated and one has to take the preventive measures against the juridical person.

The organ that has authorized the registration of the juridical person and the organ that has registered the juridical person, respectively the organ that has registered the institution are obliged to communicate to the juridical organ, in term of 24 hours from the date of registration, in a certified copy, any mention registered by this one regarding the juridical person.

The juridical person is obliged to communicate to the juridical organ, in term of 24 hours, the intention for fusion, division, dissolution, reorganization, liquidation, or reduction of the capital stock.

After the definitive decision for conviction the punishment with fine, the enforcement court communicates in copy from the dispositive of the decision of the organ that has authorized the registration of the juridical person, the organ that has registered the juridical person, the organ that has registered the institution that was not submitted to authorization or registration and as well for organs with control and surveillance attributions for the juridical person, in order to perform the corresponding measures.

The non fulfillment by the organ that has authorized the registration of the juridical person, by the organ that has registered the juridical person, respectively the organ that has registered the institution, or by the juridical person, as soon as or up to the fulfillment of the stipulated terms, of the obligations of communication previously mentioned constitutes a juridical distress and is punished with a juridical fine from 500 to 5000 lei.

3.6 Effects of merger, absorption, division, reduction of the capital stock, of dissolution or of liquidation of the convicted juridical person

If, after the definitive decision for the conviction of the juridical person and up to the enforcement of applied punishments, there appears a case of merger, absorption, division, liquidation or reduction of the capital stock of this one, the authority or the institution that has the competence to authorize or to register this operation is obliged to notify the enforcement court about this action and to inform it regarding the juridical person created by merger, absorption, or that has acquired fractions from the patrimony of the divided person.

The juridical person resulted by merger, absorption or that has acquired some fractions of the patrimony of the divided person overtakes the obligations and interdictions of the convicted juridical person, the provisions of art.151 of the Criminal Code being applied in a corresponding manner. This means that in the case of loss of the juridical personality by merger, absorption or division interfered after the production of the offence, the criminal liability and the consequences of this one will be: a) the responsibility of the juridical person created by fusion; b) the responsibility of the absorbing juridical person; c) the responsibility of the juridical person that has been created by division or that has acquired fractions from the patrimony of the divided person. In this situation, at the individualization of the punishment one will take into account the respective business figure, respectively the value of the patrimonial active of the juridical person that has committed the offence, as well as the part of the patrimony of this one that has been transmitted to the juridical person participating to the operation.

One can observe the fact that, compared to the previous regulation, that interdicted the initiation of merger, division, reduction of the capital stock, dissolution or liquidation of the juridical person after the definitive conviction decision and until the enforcement of applied punishments, according to the actual regulation, if, after the definitive decision for the conviction of the juridical person and up to the execution of applied punishments, there interferes a case of merger, absorption, division, dissolution, liquidation or reduction of the capital stock of this one, it has been stipulated the obligation of the authority or of the court to authorize or to register this operation to notify the enforcement court regarding this one and to inform regarding the juridical person created by merger, absorption or that has acquired some fractions from the patrimony of the divided person⁹.

4. Enforcement of punishments applicable to juridical persons

4.1 Enforcement of the punishment with fine

The fine consists of an amount of money that the juridical person is convicted to pay to the state.

The quantum of the fine is established by the system of fine-days. The amount corresponding to a fine-days, contained between 100 and 5000 lei is multiplied with the number of fine-days, which is contained between 30 days and 600 days.

The court established the number of fine-days taking into account the general criteria for the individualization of the punishment. The quantum of the amount corresponding to a fine-day is determined taking into account the business figure, in the case of the juridical person with lucrative scope, respectively the value of the patrimonial active in the case of other juridical person, as well as for other obligations of the juridical person (art.137 Criminal Code).

The juridical person convicted to a punishment with fine, is obliged to deposit the receipt for the integral payment of the fine to the judge delegated with the enforcement, in term of 3 months from the definitive conviction decision.

When the convicted juridical person is in the impossibility to integrally pay the fine in the term stipulated by law, the judge delegated with enforcement, at the request of the juridical person, can dispose the staggering of the fine for 2 years, in monthly payments.

⁹ Corina Voicu, Andreea Simona Uzlaşu, Georgiana Tudor, Victor Văduva, *New Criminal Procedure Code, Application Guide for Practitioners*, Publishing House Hamangiu, Bucharest, 2014, p.591-592

In the case of no fulfillment of the payment obligation for the fine in the term stipulated by law (3 months from the definitive decision) or the non payment of an installment (if one has disposed the staggering of the payment) the enforcement court communicates and excerpt on that part from the dispositive that concerns the application of the fine to competent organisms according to the provisions of the law regarding the enforced application of fiscal debts.

4.2. The enforcement of complementary punishments of dissolution of the juridical persons

The complementary punishment of dissolution of the juridical person is applied, according to art.139 Criminal Code, when:

- a) the juridical person has been constituted with the scope of producing offences;
- b) its object of activity has been modified with the scope of producing offences, and the punishment stipulated by law for the offence produced is imprisonment bigger than 3 years.

As well, in case of non execution, with bad will, of one of the complementary punishments stipulated by art. 136 paragraph 3 letter b-e Criminal Code (suspension of the activity or of one of the activities of the juridical person, cancellation of all working points of the juridical person, forbidding to participate in the procedures of public procurement, situation under juridical surveillance, the court disposes the dissolution of the juridical person.

The enforcement of the complementary punishment of dissolution of the juridical person is made by the communication to the juridical person by the judge delegated with execution, of one copy of the dispositive of the decision of conviction, at the date when it is definitive, of the respective juridical person, as well as of the organ that has authorized the registration of the juridical person, respectively the organ that has registered the juridical person, requesting at the same time the information regarding the manner of achievement of the measure.

On the date when the conviction decision is definitive the complementary punishment of dissolution will lead to the liquidation of the juridical person.

4.3 The enforcement of the complementary punishment of suspension of the activity of the juridical person

The complementary punishment of suspension of the activity of the juridical person consists in forbidding the development of the activity or of one of the activities of the juridical person in the achievement of which the offence has been constituted (art.140 Criminal code).

As well, in case of non execution, with bad will of the complementary punishment of posting or publication of the conviction decision, the court will dispose the suspension of the activity or of one of the activities of the juridical person until the enforcement of the complementary punishment but for not more than 3 months.

The enforcement of the complementary punishment of suspension of the activity of the juridical person is achieved by the communication of one copy of the disposition of the conviction decision by which one has applied this punishment, on the date when the decision is definitive, to the organ that has authorized the registration of the juridical person, of the organ that has registered the juridical person, at the organ that has registered the institution that is not supposed to authorization or registration, as well as to organs with control and surveillance attributions for juridical persons, in order to take the necessary measures.

4.4 The enforcement of the complementary punishment of closing of all working points of the juridical person

The complementary punishment of closing some working points of the juridical person consist of the closing of one or more working points belonging to the juridical person with lucrative scope, in which it has developed the activity in the achievement of which one has produced the offence (art.142 of Criminal Code).

A copy of the dispositive of the conviction decision, by which one has applied to the juridical person the complementary punishment of closing some working points is communicated,

on the date when it is definitive, to the organ that has authorized the registration of the juridical person, of the organ that has registered the juridical person, at the organ that has registered the institution that is not supposed to authorization or registration, as well as to organs with control and surveillance attributions for juridical persons, in order to take the necessary measures.

4.5 The enforcement of the complementary punishment to forbid the participation in public procurement procedures

The complementary punishment to forbid the participation in public procurement procedures consist in forbidding the participation directly or indirectly at the procedures for the granting of public procurement contracts, stipulated by law (art.143 Criminal Code).

A copy of the dispositive of the decision of conviction by which one has applied to the juridical person this punishment will be communicated on the date when the decision is definitive:

- a) to the Trade Register Office in order to perform the formalities of publicity in the Trade Register.
- b) to the Ministry of Justice in order to perform the formalities of publicity in the National Register of juridical persons without a patrimonial scope;
- c) to any other institution that has the evidence of juridical persons, in order to perform the formalities of publicity;
- d) to the administrator of the electronic system of public procurement.

As well a copy of the dispositive of the conviction decision, by which one has applied to the juridical person the complementary punishment of closing some working points is communicated, on the date when it is definitive, to the organ that has authorized the registration of the juridical person, of the organ that has registered the juridical person, at the organ that has registered the institution that is not supposed to authorization or registration, as well as to organs with control and surveillance attributions for juridical persons, in order to take the necessary measures.

4.6 The enforcement of the complementary punishment of emplacement under juridical surveillance

The complementary issue of emplacement under juridical surveillance (punishment that is newly introduced in the actual Criminal Code) supposes, according to art.144 of the Criminal Code the development under the surveillance of an attorney-at-law who has occasioned the production of the offence, for a period from one year to 3 years.

The juridical attorney - at - law has the obligation to notify the court when it ascertains that the juridical person has not taken the necessary measures in order to prevent the production of new offences. In the case when the court ascertains the fact that the seizure is grounded, it disposes the replacement of the punishment with the complementary punishment of suspension of the activity of the juridical person.

The attributions of the attorney-at-law regarding the surveillance of the activity of the juridical person are contained in the dispositive of the conviction decision by which the punishment has been applied.

The juridical attorney-at-law cannot substitute himself to state organs in the management of activities of the juridical person.

4.7 The enforcement of the complementary punishment of posting or publication of the conviction decision

As it comes out from the contents of the art.145 Criminal Code the posting of the definitive decision for conviction or the publication of this one is achieved on the expense of the convicted juridical person:

- posting of the conviction decision is made under the form of an excerpt, in the form and on the place established by the court, for a period between one month and 3 months;

- the publication of the conviction decision is made only under the form of an excerpt, in the form and on the place established by the court, by the means of written press or audiovisual media or by any other type of audiovisual communication determined by the court.

If the publication is made by written press or audiovisual the court established the number of postings, number that cannot be bigger than 10, and in the case of publication by other audiovisual means the duration of this one cannot overpass 3 months.

The enforcement of the punishment of posting is made by the communication of the conviction decision that concerns the application of this punishment on the date when it is definitive, for the convicted juridical person, in order to post it in the form, place and for the period established by court.

The enforcement of the publication punishment is made by the communication of an excerpt of the conviction decision that concerns the application of this punishment, on the date when it is definitive, for the convicted juridical person, in order to publish the decision in the form established by court, on its own expense, by the means of written press or audiovisual or by any other means of communication, assigned by court.

The convicted juridical person will send to the enforcement court the proof of starting of the enforcement of posting or, according to the case, the proof of enforcement of the publication of conviction decision, in term of 30 days from the communication of the decision, but not later than 10 days from the starting of enforcement or, according to the case, from the enforcement of the main punishment.

A copy of the dispositive of the conviction decision, by which one has applied to the juridical person the complementary punishment of closing some working points is communicated, on the date when it is definitive, to the organ that has authorized the registration of the juridical person, of the organ that has registered the juridical person, at the organ that has registered the institution that is not supposed to authorization or registration, as well as to organs with control and surveillance attributions for juridical persons, in order to take the necessary measures.

4.8 Surveillance of the enforcement of complementary punishments applied to juridical persons

In case of non execution with bad will of complementary punishments, the enforcement court will dispose the dissolution of the juridical person or according to the case, the suspension of the activity or of one of the activities, until the enforcement of the punishment.

Regarding the procedure, the notification of the court is made from the office, by the delegated judge of the enforcement court.

The juridical person is summoned in court, and the participation of the prosecutor is compulsory. After the conclusions of the prosecutor and the hearing of the convicted juridical person, the court will give a decision in session.

5. Conclusions

In the new Criminal Code as well as in the new Criminal Procedure Code one has brought some substantial modifications to the majority of institutions of criminal law and criminal procedural law including in the matter of special procedures.

Regarding special procedures regulated by the new Criminal Procedure Code, against the previous regulation one introduced a new procedure - agreement of ascertainment of guilt and brings some modifications to the procedure regarding the criminal liability of the juridical person, the procedure in the causes with minor offenders, the procedure of rehabilitation and the procedure of re defense of the material damage or moral damage in case of juridical error or in case of illegal deprivation of liberty or in some other cases.

The specificity of punishments applicable to the juridical person and of offences that can be produced by a juridical person justify, as well in the actual law, the institution of some special procedures regarding the criminal liability of the juridical person.

From the analysis performed there come out some differences regarding the regulation of this special procedure in the actual Criminal procedure Code compared to the anterior one.

So, compared to the Criminal Procedure Code from 1968 the new code regulates in a different manner the representation of the juridical person and does not contain any special provisions regarding the territorial competence of juridical organs in the case of offences produced by juridical persons, following that this competence will be established according to rules from the General Part of the Code.

Corresponding to introduction, in the actual Criminal Procedure Code, and for some categories of juridical organs, respectively the judge of rights and liberties and the judge of preliminary chamber, has been modified and the competence of taking the preventive measures against the juridical person during criminal pursuit, in the sense that this competence belongs, in the present, to the judge of rights and liberties. In the procedure of preliminary chamber (procedural stage introduced by the actual code), as it has to be, the competence of preventive measures belongs to the preliminary chamber judge.

Another modification has aimed the inferior limit of the quantum of caution at which the juridical person can be obliged in order to observe the preventive measures disposes, limit that, compared to 5000 lei, according to the previous code, is in the present time up to 10 000 lei.

As well, due to the fact that in the actual Criminal Procedure Code, in order to ensure the quality of celerity of the criminal process, one has reduced the number of justice degrees by the cancellation of recourse as an ordinary attack way, regarding the special procedure for the criminal liability of the juridical person and has introduced the contestation, as an attack mean against the judge of rights and liberties, the judge of preliminary chamber or the court regarding the taking of one or more preventive measures.

Compared to the systematization of the Criminal Procedure Code from 1968 where special procedures made the object of the last title of the Special Part (Title IV), the structure of the actual Criminal Procedure Code, the regulation of special procedures precedes the dispositions regarding the enforcement of decisions, which are contained in the final title of Special Parts. It is true that the enforcement of decisions represents the final stage of the criminal process, but, taking into consideration the fact that during special procedures one also contains some derogatory standards regarding the enforcement (including regarding the procedure for the criminal liability of the juridical person) and more updated was the systematization of the Criminal Procedure Code from 1968 where derogatory standards were situated after common law standards, including regarding the execution in that matter.

In conclusion, even though it is perfectible the new criminal law and criminal -procedural enters into force on the 1st of February 2014, and has lead the reform under the much expected form which was imposed in order to put in agreement the legislation in the matter of European standards.

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