

PENALTIES BY FINE AS AN ALTERNATIVE SANCTION TO IMPRISONMENT IN THE REGULATIONS OF ROMANIAN LEGISLATION

*Mariana-Narcisa RADU**

Abstract

Consisting of the amount of money that the convict is obliged to pay to State, the fine knows a different approach in the regulation of the new Criminal Code, in line with the United Nations Standard Minimum Rules for Non-custodial Measures and the recommendations of the Council of Europe. We note, among other things, that the Court sets its amount by a day-fine system, it can accompany imprisonment, it can be executed by providing of unpaid community service. Also, the non-execution, in bad faith, of the punishment of the fine leads to its replacement with an appropriate number of days of imprisonment. When determining the amount of a fine, account shall be taken, in the case of the individual, of the material situation of the convicted person, of his legal obligations towards his dependents.

Other provisions concerning the fine include the prescription of criminal liability and punishment, as well as rehabilitation.

Keywords: *fine, money, jail, fine-day system,*

JEL Classification: [K14, K32]

1. Introduction

Fines are the only principal penalty that does not affect one's freedom (Hotca, 2007, p. 657), and is adaptable and remissible (Mitrache & Mitrache, 2009, p. 200). As a principal penalty, fines are applied only by the court of justice after establishing the criminal liability of the perpetrator for the committed act. The fine has the advantage of not isolating the convicted person from his or her environment. At the same time, as it often constitutes an alternative to punishment by imprisonment, it also aids in preventing the overpopulation of detention centers. Fines also come with disadvantages. Thus, we cannot look past the fact that, most of the time, ruling in favor of a fine and its subsequent payment can cause certain effects on the persons found under the care and protection of the convicted person as well.

According to the existing information on the website of the Ministry of Justice¹, the current regulations found in Romanian legislation in what concerns

* Associate Professor, PhD., Faculty of Law Cluj-Napoca, "Dimitrie Cantemir" University, Romania.

¹ See the information available at: <http://www.just.ro/LinkClick.aspx?fileticket=Wpo7d56II%2fQ%3d&tabid=2604>, accessed on May 20th, (2015).

the penalty by fine were formulated according to the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) from 1990, Recommendation 79/14 of the Council of Europe Concerning the Application of the European Convention on the Supervision of the Conditionally Suspended or Conditionally Released Offenders, Recommendation 80/11 of the Council of Europe Concerning Custody Pending Trial, Recommendation 92/16 of the Council of Europe on Community Sanctions and Measures, Recommendation 99/22 of the Council of Europe Concerning Prison Overcrowding and Prison Population Inflation, Recommendation 2000/22 of the Council of Europe on Community Sanctions and Measures, Recommendation 2003/22 of the Council of Europe on Conditional Release (Parole), Recommendation 2003/23 of the Council of Europe on the Management by Prison Administrations of Life Sentence and Other Long-Term Prisoners, Recommendation 2006/2E of the Council of Europe on the European Prison Rules, Recommendation 2010/1 of the Council of Europe on European Probation Rules, Council of Europe Resolution (70)1 on the Practical Organisation of Measures for the Supervision and After-Care of Conditionally Sentenced or Conditionally Released Offenders, Council of Europe Resolution (76)2 on the Treatment of Long-Term Prisoners, Council of Europe Resolution (76)10 on Certain Alternative Penal Measures.

The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) of 1990² specify that the Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender³. According to the dispositions featured in section 1.3, the Tokyo Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

The standards forward, as we can see in the section dedicated to the fundamental objectives, a series of fundamental principles in order to favor measures that do not involve deprivation of liberty, as well as minimum guarantees for the persons subject to the alternative measures to prison.

The measures that do not involve the deprivation of liberty must be applied according to the principle of minimum intervention (section 2.4).

Thus, the judicial authorities are recommended for their rulings to take under account the need to reintegrate the offender and to protect society and the interests of the victim, who must be consulted whenever it is appropriate to do so⁴. Choosing this type of measure must be founded, based on section 3.2,

² Adopted by General Assembly resolution 45/110 of 14 December (1990), available at: <https://www.un.org/ruleoflaw/files/UNITED~2.PDF>, accessed on February 12th, (2018).

³ See section 1.5 of the Tokyo Rules.

⁴ The Tokyo Rules.

8 - Sentencing dispositions.

on the established criteria concerning both the nature and the gravity of the offence, the personality and prior record of the offender, the purpose of the penalty and the victims' rights.

In accordance with section 8.2, item d, we can find, amongst the measures that can be enforced by the competent authorities, penalties that are economic and pecuniary in nature, such as the fine and the fine-day.⁵

Furthermore, it is stated within Council of Europe Recommendation Rec(2000)22 of the Committee of Ministers for the Member States on Improving the Implementation of the European Rules on Community Sanctions and Measures⁶ that: "in order to promote the use of non-custodial sanctions and measures, and in particular where new laws are created, the legislator should consider indicating a non-custodial sanction or measure instead of imprisonment as a reference point sanction for certain offences."⁷

When analyzing the subject of compliance with the international standards on the regulation of non-custodial penalties in Romania, some authors have been of the opinion that penalties involving the deprivation of liberty should constitute the last resort, while non-custodial penalties should be given top priority (Chiş, et al., 2010, p. 35). The same authors indicate, justifiably in our opinion, that the provisions of the Criminal Code concerning penalties should commence with the least severe ones, not the life sentence, as such a hierarchy would lead to the idea that the most severe penalties are the most extreme and the last resort.

The fact that detention is the most frequent as a principal penalty and not a last resort even for minor offences was also pointed out in the text of the Bucharest Declaration: Alternative Sanctions and Measures in Central-European and Eastern European Countries.⁸

Thus, the new Romanian Criminal Code acted on the recommendations and significantly changed certain aspects pertaining to the fine as a principal penalty. A new regulation on the penalty by fine has been established,

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

⁵ Section 8.2 of the Tokyo Rules contains the following:

Sentencing authorities may dispose of cases in the following ways: (a) Verbal sanctions, such as admonition, reprimand and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day-fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order; (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment.

⁶ Adopted by the Committee of Ministers on November 29th, (2000), available at: <https://rm.coe.int/16806f407c>, accessed on March 11th, (2018).

⁷ See section 2 from Annex 2 to Rec (2000) 22 of the Committee of Ministers.

⁸ Bucharest, 10-11 September (2001), the International Conference on Alternatives to Detention in Central and Eastern Europe.

significantly widening its field of application in comparison to the previous Criminal Code, by increasing the number of offences or their various other iterations for which fines are the only penalty possible or an alternative penalty to imprisonment (Pașca, 2014, p. 14; Rotaru, 2014, p. 260; Păvăleanu, 2009, p. 27).

2. Fines applicable to the natural person in the regulations of the current Romanian Criminal Code

In accordance with the dispositions of para. (1), art. 61 of the Criminal Code, a fine consists of the amount of money a convicted individual is compelled to pay to the State. It is executed through its payment by the convicted person (Lorincz & Măgureanu, 2014) and it is entered into their criminal record, thus constituting, as it is specified in the doctrine, a criminal prior which can be considered when assessing the perpetrator's conduct (Pașca, 2014, p. 452; Mitrache & Mitrache, 2009, p. 200). According to the dispositions in art. 559, para. (1) of the Criminal Procedure Code, persons sentenced to pay a fine are under an obligation to submit the receipt confirming the full payment of the fine with the judge delegate in charge of enforcement, within 3 months as from the date when the court sentence remains final. When a convicted person is unable to pay the full fine within these 3 months, the judge delegate in charge of enforcement, upon request by the convict, may order rescheduling of the fine payment for a time interval of maximum 2 years, in monthly installments.

As it is specified in the legal dispositions, the fine is the product between the number of fine-days and the amount of a single fine-day as ruled by the court.

The amount of the fine shall be established in the system of fine-days (art. 61, par. (2) of the Criminal Code).

A court shall establish the number of fine-days according to the general criteria for customization of sentencing regulated in art. 74 of the Criminal Code. Thus, the number of fine-days shall be established depending on the gravity of the offence and the threat posed by the offender, which is estimated based on the following criteria:

- a) The circumstances and manner of commission of the offense, as well as the means that were used;
- b) The threat to the protected social value;
- c) The nature and seriousness of the outcome produced by the offense or other consequences of the offense;
- d) The reason for committing the offense and intended goal;
- e) The nature and frequency of offenses in the convict's criminal history;
- f) The convict's conduct after committing the offense and during the trial;
- g) The convict's level of education, age, health, family and social situation.

The sum corresponding to one fine-day is estimated on the basis of two conditions which are, in our opinion, cumulative:

- The financial standing of the convicted person;

- The legal obligations of the convicted person towards the persons they support.

We believe that, in order to ease the application of the final dispositions in par. (3), art. 61, the court of justice must exercise all its due diligence to obtain all of the information regarding the financial standing on the defendant. If the court of justice fails to do so, the effects of the punishment may extend to the persons found in the defendant's care or they may be ampler than the ones intended (Crişan, 2009, pp. 155-157). The doctrine has otherwise underlined that the reference to a special customization criterium, which the law makes, has the purpose of ensuring, as much as possible, that the nature of the punishment is personal, in such a way that the coercive effects of the penalty by fine does not reflect on the persons found under the care of the convicted person (Bulai, 2015, p. 36; Rotaru, 2014, p. 260).

According to art. 61, para. (2), the amount of the fine shall be established in the system of fine-days. The amount for one fine-day ranges from 10 RON and 500 RON, and will be multiplied by the number of fine-days, which ranges from 30 and 400. We must underline that these are the minimum and maximum thresholds, which, in the opinion of some authors, are indicative in value, as the lawmaker has established special thresholds within them (Bulai, 2015, p. 36). Thus, applying the new dispositions, the minimum and maximum general thresholds of the penalty by fine are 300 lei and 200,000 lei respectively.

As we have previously stated, the lawmaker has set special thresholds for fine-days within the context of the general limits. In accordance with the dispositions of art. 61, par. (4) of the Criminal Code, the special thresholds for fine-days range between:

a) 60 to 180 fine-days, when the law stipulates only a penalty by fine for that offense;

b) 120 to 240 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of no more than 2 years;

c) 180 to 300 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of more than 2 years.

Given these facts, we must emphasize that the fact that the lawmaker has the choice of determining the penalty by fine with reference to the fine-days is a new feature of Romanian law, as the previous regulation provided that the fine was a sum of money decided upon by the court with regard to certain thresholds (either special or general and representing the minimum and maximum amount). We believe that this choice that the Romanian lawmaker has made, in order to align with international regulations, is beneficial, as we share the same opinion already expressed in the literature, that this system allows for a better customization of the penalty by fine, both in terms of proportionality and efficiency, as the financial standing and patrimonial obligations of the defendant

are now taken under consideration, such that the sentence fulfills its functions and purpose (Bulai, 2015, p. 36; Hotca, 2009, pp. 62-63).

The amount of the fine is determined in two stages:

- In the first stage, the court rules on the number of fine-days that the defendant shall be sentenced to, taking the general penalty customization criteria specified in art. 74 of the Criminal Code under consideration;

- In the second stage, the court determines the amount of fine-days while taking the criteria formulated in art. 61, par. (3) under consideration.

The dispositions in art. 61, para. (5) of the Criminal Code are also in relation to the previous regulations on the new penalty by fine, and they state that, if the committed offense was intended to provide a material gain, and the penalty stipulated by law is only a fine or the court chooses to only sentence to that penalty, the special thresholds for fine-days can be increased by one-third.

At the same time, in accordance with the dispositions of art. 61, para. (6) of the Criminal Code, the increments established by law for mitigating or aggravating circumstances (Soare, 2009, p. 119) shall apply to the special thresholds for fine-days stipulated at para. (4) and para. (5). In other words, when the court applies the dispositions referring to their effects and the penalty chosen is the fine, the court shall, by case, refer to the special fine-day thresholds provided for in par. (4), art. 61 or the fine-days increased by a third, according to par. (5), art. 61 of the Criminal Code (Bulai, 2015, p. 37; Pașca, 2014, p. 453).

2.1. The penalty by fine that accompanies a penalty by imprisonment

In the previous Criminal Code, the fine was regulated either as the only possible penalty or an alternative to imprisonment, whereas the new Code introduces the possibility of cumulatively ordering the payment of a fine beside the penalty by imprisonment (Bulai, 2015, pp. 37-38; Pașca, 2014, p. 453; Păvăleanu, 2009, p. 27) when the committed offence had the purpose of obtaining a material gain for the perpetrator. The reasoning behind this lies in the fact that there is a necessity to rely on efficient means of penal punishment which do not involve increasing the prison sentence⁹. It has been shown that it was also deemed necessary for an adequate means to exist which reacts and “more efficiently fights so-called acquisitive crime, offences committed in the pursuit of wealth.” (Bulai, 2015, p. 38; Pașca, 2014, p. 453; Rotaru, 2014, p. 261)

Thus, according to the dispositions in art. 62 of the Penal Code, if the committed offense was intended to provide a material gain, the penalty by imprisonment can be accompanied by a penalty by fine. Hence, the possibility of adding the penalty by fine to the penalty by imprisonment can only occur if a mandatory condition is met, and that is for the offence to have been committed with the purpose of obtaining a material gain. Based on the

⁹ <http://www.just.ro/LinkClick.aspx?fileticket=Wpo7d56II%2fQ%3d&tabid=2604>.

wording of the lawmaker, we can deduce that it is not necessary for the material gain to have been effectively obtained.

As stated in the literature, the sanction by fine can be applied along with the penalty by imprisonment both in the case where the law provides for imprisonment as the only possible penalty and as an alternative along with the penalty by fine, as well as the cases where, although the law provides for the penalty by imprisonment alternatively with the penalty by life detention, the court has opted for the penalty by imprisonment (Udroiu, 2014, p. 129).

Based on the wording of the lawmaker in art. 62, para. (1) of the Criminal Code, we can deduce that the penalty by fine is optional for the penalty by imprisonment, as the court also has the possibility to decide solely for a penalty by imprisonment.

If the court considers that the penalty by fine is also necessary along with the penalty by imprisonment, according to art. 62, par. (2) of the Criminal Code, the special thresholds for the fine-days provided for in art. 61, par. (4), items b) and c) are to be determined depending on the length of the prison sentence decided by the court. They cannot be reduced or increased because of mitigating or aggravating circumstances.

In accordance with the provisions of art. 62, par. (3), in establishing the amount of one fine-day consideration shall be given to the amount of material gain that was obtained or desired.

We believe that this is not the exclusive criterium that the court shall have to take into account when deciding in favor of a fine besides imprisonment, but a supplementary one, specific for the situation in which the offender's purpose is the obtainment of material gain by committing the offence. We are of the opinion that, in such a case, when establishing the amount for the sum equivalent to a fine-day, the criteria should be: the financial standing of the convicted person; the legal obligations that the convicted person has towards the persons they are supporting; the value of the material gain obtained or desired.

2.2. The replacement of a penalty by fine by a term of imprisonment

In accordance with the dispositions in art. 63 of the Criminal Code, the penalty by fine can be replaced with the penalty by imprisonment when the convicted person fails to pay their fine, in ill-faith, in whole or in part.

After studying the provisions found in art. 63 of the Criminal Code, there are two possible replacements for the penalty by fine, and they are:

- The replacement of the fine as a sole penalty with a penalty by imprisonment;
- The replacement of the fine as a penalty that accompanies the penalty by imprisonment with a penalty of imprisonment.

In both cases, in order to replace the penalty by fine with imprisonment, it is necessary for the convicted person not to pay their fine, in ill-faith, in whole or in part. It is thus obvious that it is only ill faith that shall bring the

issue of imprisonment into discussion if the convicted person's failure to pay the fine is proven (Udroiu, 2014, p. 130).

According to art. 63, para. (3), in case a penalty by fine is replaced by a penalty by imprisonment, as under para. (1) and para. (2), one fine-day shall be substituted by one day of imprisonment.

In the first case, according to the previously mentioned regulations, the number of unpaid fine-days shall be replaced with a corresponding amount of days of imprisonment.

Thus, for example, in the case of a person sentenced to 150 fine-days who, in ill-faith, has not paid for a single day, the penalty by fine shall be replaced with the corresponding 150 days of imprisonment. If the convicted person has paid part of the penalty by fine¹⁰, after which they refuse, in ill-faith, to pay the remainder of the penalty, the unpaid fine-days shall be replaced with the corresponding amount of days of imprisonment. Using the same example, let's say that 75 of the 150 fine-days have been paid and, because the convicted defendant has displayed ill faith due to not paying the remainder of their penalty, the other 75 fine-days shall be substituted with 75 days of imprisonment.

According to para. (2), art. 63, in the second case, if the unpaid fine accompanied a penalty by imprisonment, the number of fine-days that was not paid up shall be replaced by the same number of days of imprisonment, which shall be added to the term of imprisonment, and the resulting penalty shall constitute one single penalty.

We must underline the imperative nature of art. 63 of the Criminal Code, leaving the court with no possibility to choose whether the unpaid fine shall be replaced or not with a penalty by imprisonment, as the replacement is mandatory (Bulai, 2015, p. 40; Pașca, 2014, p. 454).

2.3. Serving the penalty by fine by performing unpaid community service

Community service is provided for in art. 64 of the Criminal Code, its dispositions having no prior iteration in the regulations of the previous Criminal Code.

According to the abovementioned regulations, in case the whole or part of the penalty by fine cannot be served for reasons not attributable to the convicted defendant, with the latter's consent, the Court can replace the obligation to pay the fine with the obligation to perform community service (Pașca, 2014, p. 456), except for the cases where the person's health precludes them from performing such service.

¹⁰ Failure to pay the penalty by fine in part is possible when the convicted defendant has requested and obtained the possibility to pay their fine in installments and has consequently chosen not to fulfill this obligation.

The enforcement court is the only authority that has the jurisdiction to decide upon the replacement, per the conditions stipulated in art. 560 of the Criminal Procedure Code.

Studying art. 64, par. (1) of the Criminal Code, we can deduce that these dispositions shall be applied if the following conditions are met cumulatively:

- The court has ruled in favor of a penalty by fine either as a sole penalty or accompanying the penalty by imprisonment;
- The penalty by fine cannot be paid, in full or in part, because of reasons not attributable to the convicted defendant (Pașca, 2014, p. 456);
- The convicted person must give consent to perform unpaid community service (Bulai, 2015, p. 41);
- The convicted person's health must allow for the performance of unpaid community service (they must be medically fit).

If these conditions are met, the court can decide for the replacement of the unpaid fine-days with their exact equivalent in days performing unpaid community service. We can see that, although the lawmaker refers to fulfilling the penalty by fine by performing unpaid community service within art. 64, it uses the term of "replacement" of the penalty by fine with the penalty by performing unpaid community service (Udroiu, 2014, p. 132).

If the fine that was replaced accompanied a penalty by imprisonment, the obligation to perform community service shall be served after the end of the term of imprisonment, as stated in art. 64, par. (2) of the Criminal Code.

According to art. 560, par. 1 of the Criminal Procedure Code, the enforcement court is the one having jurisdiction to decide upon the replacement of an unfulfilled obligation to pay a fine by community service. The court may be notified *ex officio* or by the body enforcing the fine, under the law, or by the convicted person.

As provided for in the legal dispositions, the probation service is the one responsible with coordinating the fulfillment of the penalty by community service. According to the dispositions in art. 560, par. (2) of the Criminal Procedure Code, the court may be notified *ex officio* or by the body enforcing the fine, under the law, or by the convicted person. In ordering the replacement of a penalty by fine by community service, the court shall mention in the decision's enacting terms two entities of the community with which the community service will be performed. The probation officer, based on an initial assessment, shall decide in which of the two community institutions mentioned in the court decision the obligation will be performed and on the activity type (Lorincz & Măgureanu, 2014).

Failure to fulfill the conditions stipulated by the lawmaker renders the dispositions of par. (1), art. 64 inapplicable, while setting others in effect. Thus, in case the convicted defendant who cannot pay the penalty by fine for reasons not attributable to them does not provide consent to perform unpaid

community service, the unpaid fine shall be replaced, according to par. (6), art. 64 of the Criminal Code, with the penalty by imprisonment (as per the regulations in art. 63 of the Criminal Code).

We are faced with a special case of replacement of the penalty by fine with the penalty by imprisonment which is worthy of discussion here, as the doctrine has pointed out (Bulai, 2015, p. 42). The cited author shows that, in the analyzed case, the lawmaker conflates the lack of consent to perform unpaid community service with ill-faith in the payment of the penalty by fine.

We believe such a disposition to be objectionable, as the lawmaker presumes that the person who cannot pay the penalty for reasons not attributable to them and who does not provide consent to perform unpaid community service displays ill-faith. It would probably be more beneficial for the court to have the possibility to assess the convicted defendant's reasons for not providing consent to perform unpaid community service.

Furthermore, an important question to ask is what happens in the case where the convicted defendant cannot, for medical reasons, perform community service, and also cannot, for reasons which cannot be attributed to them, pay the fine. We believe, as do other authors, that the court cannot consider this to be a display of ill-faith on the part of the convicted person who is not able, for medical reasons, to perform community service (Pașca, 2014, p. 457; Udriou, 2014, p. 131), and the court cannot consequently decide for the replacement of the unpaid fine-days with imprisonment. We are of the opinion, in this case, that if during the limitation period related to the payment of the penalty by fine, the convicted person does not overcome the health issues that render them unable to perform community service, and they also cannot pay the fine, then, when the limitation period is over, the obligation to fulfill the penalty becomes null. We are then, however, left to wonder what would happen to the purpose of the penalty.

Regulated in this form, community service seems to be, in terms of its legal nature, a substitute to the penalty by fine for the insolvent persons of good faith who give consent to fulfilling the penalty by fine in this manner. (Pașca, 2014, p. 15; Rotaru, 2014, p. 262; Bulai, 2015, p. 42)¹¹

The obligation to perform community service decided upon by the court ceases either when the corresponding number of fine-days spent performing community service is fulfilled or when the fine corresponding to the remaining fine-days not yet served is paid in full by the convicted defendant (art. 64, par. (4) of the Criminal Code). It is thus evident that priority is given to the payment of the fine at the expense of the penalty of performing community service, and, as such, the payment of the fine through unpaid community service is merely a subsidiary manner of serving it for reasons not attributable to the convicted person.

¹¹ See: <http://www.just.ro/LinkClick.aspx?fileticket=Wpo7d56II%2fQ%3d&tabid=2604>.

The lawmaker has, however, provided for the possibility of the obligation to perform unpaid community service to be replaced with a penalty by deprivation of liberty by replacing the unserved fine-days with days of imprisonment should the convicted person not perform community service under the conditions set by the court or should they commit a new offence.

Thus, in accordance to the provisions specified in art. 64, para. (5) of the Criminal Code, the Court shall replace fine-days that were not served as community service by a corresponding number of days of imprisonment¹² if:

a) The convicted defendant fails to perform community service as ordered by the Court (Bulai, 2015, p. 42);

b) The convicted defendant commits a new offense which is discovered before full performance of community service. The fine-days that were not served in the form of community service at the date of final conviction for the new offense, replaced by days of imprisonment, shall be added to the penalty for the new offense.

The court may be seized, according to art. 561, par. (2) of the Criminal Procedure Code, *ex officio* or by the body enforcing the fine, under the law, or upon notification from the probation service.

3. Other aspects concerning the penalty by fine

According to the dispositions in art. 154, para. 1, item e, in the case in which the penalty provided for by the law for the committed offence is by fine, the statute of limitations for criminal liability for the natural person is 3 years and the statute of limitations terms shall run as of the date the offense is committed. In case of continuing offenses, the statute of limitations term runs as of the date the action or inaction is ceased, in case of continuous offenses, as of the date the last action or inaction is performed, and in case of habitual offenses, as of the date the last act is performed. In case of progressive offenses, the statute of limitations of criminal liability runs as of the date the action or inaction is performed and shall be computed in consideration of the penalty that is appropriate for the final consequence it caused.

The statute of limitations term for the service of a penalty by fine in the case of a natural person is 3 years, according to art. 162 of the Criminal Code, and it shall run as of the date the conviction sentence is final.

In accordance with the dispositions in art. 165, in case of a fine, statutory rehabilitation occurs if the convict does not commit another offense within a period of three years.

¹² According to art. 561, para. (1) of the Criminal Procedure Code, the court having jurisdiction to order, as per Art. 64 para.(5) item a) of the Criminal Code, replacement of community service work by an imprisonment term is the enforcement court and, in the case set by Art. 64 para.(5) item b) of the Criminal Code, is the court ruling in first instance on the offense committed prior to the full performance of the community service work.

Conclusions

The fine as an applicable principal penalty in the case of an offence is regulated, as we have seen, in a new, innovative manner. The new penal dispositions reflect the Romanian lawmaker's preoccupation with bringing the regulations concerning the penalty by fine up to the existing international standards and recommendations.

However, after conducting an analysis of the dispositions in the current Criminal Code, it appears that the Romanian lawmaker has made some dispositions concerning fines tougher, and among the examples we can provide to highlight this situation are the possibility of the penalty by fine to accompany a penalty by imprisonment in case material gain was the purpose of committing the offense, the possibility of increasing the special thresholds of the fine-days in this case by a third, etc.

We cannot ignore the fact that the current provisions lead to a better customization of the penalty by fine however, and that the court must now, aside from the general criteria for customization of sentencing, take into account the financial standing of the convicted person, whether they are a natural person, their legal obligations towards the persons found in their care and the value of the material gain obtained or desired.

Nevertheless, as we have demonstrated, the current code also contains some objectionable dispositions concerning the penalty by fine. Bearing the international regulations in mind, we consider it fit for the lawmaker to allow the court the possibility to assess whether it is the case to replace unserved fine-days with an equal number of days of imprisonment if the convicted defendant does not provide consent to perform unpaid community service.

We also believe that it is appropriate for priority to be given, in practice and when the concrete conditions make it possible, to the penalty by fine when it is an alternative to the penalty by imprisonment.

Bibliography

1. Bulai, N., (2015). "Amenda (Comentarii)". În: G. Antoniu & T. Toader, Ed. *Explicațiile noului Cod penal Vol. II (art. 53-187)*. Bucharest: Universul Juridic.
2. Chiș, I., Chiș, A. & Munteanu, C., (2010). "Standardele europene și dezvoltarea tendințelor necustodiale ale pedepselor în România". În: *Challenges of the Knowledge Society. Juridical Series*. Bucharest: Pro Universitaria.
3. Crișan, C.-t. M., (2009). "Amenda ca sancțiune penală în Codul penal al Republicii Uzbekistan". *Revista de drept penal*, Issue 3, pp. 155-157.
4. Hotca, M., (2009). *Noul Cod penal și Codul penal anterior*. Bucharest: Hamangiu.
5. Hotca, M., (2007). *Codul penal. Comentarii și explicații*. Bucharest: C.H. Beck.
6. Lorincz, A. & Măgureanu, A., (2014). *Punerea în executare a pedepsei amenzii potrivit prevederilor Noului Cod de procedură penală*. Available at: http://www.ugb.ro/Juridica/Issue5RO/8_Punerea_in_exec_a_amenzii_penale.Anca_Lelia_Lorincz_RO.pdf [Accessed 18 March 2018].

7. Mitrache, C.-t. & Mitrache, C., (2009). *Drept penal român. Partea generală*. Bucharest: Universul Juridic.
8. Pașca, V., (2014). *Drept penal. Partea generală*. Bucharest: Universul Juridic.
9. Pașca, V., (2014). “Romania's New Penal Code and the Saga of its Adoption”. *Journal of Eastern-European Criminal Law*, Issue 1, pp. 9-22.
10. Păvăleanu, V., (2009). “Comentarii asupra unui nou Cod penal”. *Revista de drept penal*, Issue 1, pp. 24-30.
11. Rotaru, M., (2014). “Pedepsele”. În: M. Gorunescu, I. Barbu & M. Rotaru, Ed. *Drept penal. Partea generală*. Bucharest: Universul Juridic.
12. Soare, D., (2009). “Unele reflecții asupra cauzelor de modificare a pedepsei”. *Revista de drept penal*, Issue 2, pp. 118-121.
13. Udroi, M., (2014). *Fișe de drept penal. Partea generală*. Bucharest: Universul Juridic.