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The Basis of Punishment. The State's Right to Punish

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ABSTRACT: One of the three fundamental institutions of the criminal law is the sanction. It represents the right, and also the obligation of the state to intervene when a legal norm with a criminal character is violated. However, what is this right of the state to sanction? What is the origin of this right and what is its usefulness? These make up only a small part of the many questions that jurists and philosophers have raised throughout history, trying to objectively justify the basis of punishment. The reason for repression must consist not in the state's desire for revenge, but in preventing in the future the commission of dangerous acts related to the most important social values, since, as Cesare Beccaria said, "it is more effective to prevent than to treat!" The need for punishment stems from the innate human instinct of conservation in order to preserve one's own species.

KEYWORDS: punishment, rule of law, prevention, preservation, crime

1. Introductory notions. What is punishment? Punishment from the perspective of the philosophy of law

Any human society of a secular or religious nature imposes a certain state of social order, and this determines a certain type of behavior on the part of the society's members. Normally, usually, this state of order and discipline has a social, material, moral (Rotaru 2016, 29-43) and legal support, materialized in the rules of conduct established within the respective society.

In the absence of rules, norms of conduct with a moral or legal character, the state of order necessary for the life of any society cannot be ensured. For these reasons, in the event of the violation of these rules, various sanctions, meant to enforce general respect and to defend and preserve the state of order necessary for the existence of the human community, have been imposed by the leaders of the society.

Over time, sanction has known various states, types and forms, so that at the beginning of the human society it had the form of unlimited revenge, then it had the form of lex talionis - limited to the evil done "*eye for an eye*", the noxal surrender, according to which the culprit was handed over to the family of the one guilty of collective responsibility, the composition, which consisted of a compensatory indemnity that excluded the right to revenge, known to the Romans in the time of the Twelve Tables.

Private revenge has long existed, along with public punishment (Basarab 1997, 222). Later, with the development of the society and the support of the church, which suspended the practice of revenge, Greek law and the Law of the Twelve Tables considered that the only party entitled to judge the illicit acts was the state.

The criminal law sanction appears as a measure of repressive and preventive coercion. It is a means of re-education, provided by the law, being applied by the court, to natural and / or legal persons who have committed prohibited acts, incriminated by the criminal law, in order to preclude, prevent the commission of new offenses, but also to restore the affected rule of law.

Criminal sanctions are fundamental elements of criminal judicial regulations. They are necessary in order to express the abstract gravity of the deed provided by the criminal law and the warning addressed to all the members of the society regarding the consequences of violating criminal law. As a component of the criminal judicial conflict relationship, the sanction appears as

a normal, even natural consequence of criminal law, proportional to the gravity of the deed, the consequences generated, and the concrete threat presented by the perpetrator.

The actual enforcement of sanctions is extremely complex and rigorous, and it represents an important step in the fight against crime, because when the convicted person is made to serve the sentence imposed upon him/her, he/she must understand that his/her deed is disapproved by the society and that his/her punishment is not just a formal provision of the law. Only in this way will the enforcement of the sanction have the desired effect, i.e., to prevent in the future the commission of other offenses by the person already sanctioned or by other persons.

According to the explanatory dictionary of the Romanian language, punishment is a measure of repression, a sanction applied to the one who committed a mistake; a coercive measure provided by the law and applied to someone by a court as a sanction for a crime: conviction, sentence. The term punishment is a regressive derivative of the verb *a pedepsi*, derived from the neo-Greek word "epedepsa" (aorist of "*pedevo*"). According to other opinions, the notion of punishment comes from the Latin word *poena*, which means punishment.

Historically, the concept of punishment includes a diverse variety of forms of exteriorization, as well as a variety of its content. It has evolved from the sacro-magical idea of the perpetrator's sacrifice to the barbarity and cruelty of corporal punishment and the capital punishment in the Middle Ages and later, to the contemporary custodial sentence of the Modern Age (Barac 1997, 244), at present.

For these reasons, an accurate analysis of the punishment is an extremely difficult operation, as punishment is a historical phenomenon which has accompanied the evolution of the society step by step, with huge differences in terms of the punishment method depending on the historical period we refer to.

With the emergence of Christianity, the idea of the ethical responsibility of the perpetrator appeared and developed. Thus, in the Middle Ages, punishment was a response to the moral guilt of the delinquent, due to the influence exerted by the ecclesiastical theory of penance.

In Romanian law, the word *punishment* was not used in the past, until being introduced by the Phanariots (Barac 1997, 242). This word has a Greek origin and was a derivative of the verb "*to learn*", since Greek teachers did not conceive of teaching without punishment (Rotaru 2006, 16; Tanoviceanu 1924-1927,15).

A more precise definition was given by Carrara, namely: "*punishment is the evil that, according to the laws of the state, the magistrate imposes on those who are properly recognized as guilty of a crime*" (Rotaru 2006, 17).

2. The notion and characterization of the punishment in criminal law

Punishment, in criminal law, is defined as a criminal law sanction, consisting of a measure of coercion and re-education, provided by the law and applied to the perpetrator, by the court, in order to prevent the commission of new offenses (Pascu, Drăghici 2004, 342; Oancea 1995, 202; Ungureanu 1995, 270).

In the current Criminal Code, the legislator no longer expressly provides its definition, as it did in the previous Criminal Code, the one from 1969, which in art. 52 stipulated that punishment was "*a measure of coercion and a means of re-educating the convict. The purpose of the punishment is to prevent the commission of new offenses. The enforcement of the punishment aims at forming a correct attitude towards work, the rule of law and the rules of social coexistence*".

Thus, from the previous and current provisions, it follows that punishment is a measure of coercion and re-education. Hence, its most important features. Punishments are characterized by several specific features, which give them a "*specific, common physiognomy*" (Oancea 1995, 198), which distinguishes them from the other types of legal sanctions:

- ***punishment has a legal character***. This feature results from the analysis of art. 1 and 2 of the Criminal Code, which establishes the following: *the law stipulates which deeds constitute crimes, the punishments that apply to the perpetrators and the measures that can be taken in case of committing these deeds*. In the incrimination norm, punishment is provided both in terms of nature and of duration, and the court has the obligation to apply the punishments provided by the law only within the limits established by it, and the eventual exceeding of its limits can only take place as a result of retaining mitigating or aggravating circumstances and only in accordance with the law. Giving rise to a series of personal and social consequences, criminal law sanctions are expressly stipulated in the criminal law (Barac 1997, 223), thus having a legal and binding character.

- ***punishment has a determinative character***. This particularity of the punishment derives from its adaptable character (Basarab 1997, 226), as it can be proportionate, according to the principle of the individualization of punishments, depending on the concrete threat posed by the crime, the perpetrator, the mitigating or aggravating circumstances in which the deed was committed, or depending on the consequence which was produced or could have been produced. The punishment established by the court as a result of committing a crime is always absolutely determined (Drăghici 2006, 379).

- ***punishment is a public sanction***, being a means of state coercion (Ungureanu 1995, 270), since, being a social reaction, punishment can only be applied by the state, through its organs, on behalf of the entire society. The punishment is applied only by the court, within the criminal process, no other state body having this right.

- ***punishment is inevitable***, a feature which derives from its public nature. Thus, the prosecution and the enforcement of the punishment is usually done ex officio by the public authorities. Those who have committed a crime must know that they will not escape the unpleasant consequences of applying the sanction corresponding to the act committed.

- ***punishment has an afflictive character***, since it consists in a coercion which determines deprivations or restrictions of rights, depending on their nature, duration, and conditions in which it is executed. Punishment is the harshest of all the criminal law sanctions. The person to whom it applies is forced to suffer a restriction or deprivation (Vabres 1947, 197). Thus, the convict is made to suffer a penitentiary detention, to pay a sum of money, or, if released, certain restrictions are imposed on him/her. The application and enforcement of the punishment implicitly produces a certain moral (Ivan 2001, 490), physical or material suffering of the convicted person, meant to contribute to his/her correction and re-education. If the punishment did not produce such a suffering, one could not speak of the idea of sanction, of social reproach and one could not achieve its purpose, i.e., of preventing the commission of new offenses. Everything that is imposed on someone, for him/her it seems as oppression, as an obstacle in the way of his/her will, that is why any person with or without consciousness suffers when his/her will is forbidden (Drăghici 2006, 375). Suppressing the afflictive character of the punishments is an unachievable desideratum (Dongoroz 2000, 460).

- ***punishment has an educational character***, since, once applied to the perpetrator, it helps him/her to correct himself/herself, it makes him/her understand that the rules of collective coexistence and social values must be respected. At the same time, the punishment applied to perpetrators can serve as an example for other people, who can learn from the coercion applied to the perpetrator, thus having an important educational effect also on them.

- ***punishment has a personal character***, i.e., it must be applied only to the person who actually committed the crime or who directly or indirectly contributed to its commission.

3. Punishment's traits. The main characteristics of the punishment are:

- punishment is a *treatment* which involves certain suffering; (Rotaru 2006, 20)
- punishment must be applied only to the author of the illicit act;

- punishment is the natural consequence of a crime;
- punishment must be applied only by the state authorities;
- punishment is applied in order to prevent the commission of new offenses.

All the doctrinaires in the matter and not only them agree that punishment is par excellence an evil, i.e., a type of suffering imposed on a person. This particularity of punishment raises the least fears on the part of those who have formulated different definitions of the punishment.

Thus, punishment is an evil, but which responds to the evil produced by committing the dangerous illicit act. The suffering caused by the application and enforcement of the punishment derives from the long series of deprivations which the convict will endure.

J.D. Mabbot emphasized the fact that "*punishment is not a physical suffering, but rather a moral one. To associate punishment with an evil means to assign to it moral connotations, thus being a negation of the desired good, it would be more appropriate to associate it with the term displeasure (disliked)*" (Betegon 1992, 136-142).

The above-mentioned author does not agree with the terms "pain", "suffering", "evil" used quite often in the analysis of the basis of punishment. The author considers that the punishment, by its application, presupposes only a deprivation of certain pleasures and needs of its recipient. For example, the fine involves neither suffering nor pain, and even the most severe punishment - the death penalty - tries to produce, in civilized countries, as little physical suffering as possible.

Del Vechio is convinced that punishment is a good and not a bad thing, but we believe that this meaning is the result of using a metaphorical type of expression.

In relation to its nature, punishment represents and of course consists in an imposed behavior. We do not understand, thus, that punishment must necessarily be a negative experience, it is enough that it represents only a limitation or restriction of the exercise of rights. In order to achieve its purpose and fulfill its role, punishment must be applied only to the perpetrator of the illicit act. Applying the punishment to another person, who is innocent, not guilty and sending him/her to prison, can no longer be called *punishment*.

Punishment must be the consequence of committing a crime. Thus, punishment appears as the result of an offense, being applied only post delictum. For these reasons, punishments are presented as legal consequences of the non-compliance with certain rules of conduct.

Punishment is applied and enforced in order to prevent the commission of new offenses. This essential feature of the punishment reflects the feeling of confidence in the punishment's ability to change the behavior and mentality of the convict, so that, in the future, he/she does not relapse into a new criminal behavior.

4. The purpose of the punishment

The existence, application and enforcement of the punishment represent the main means of accomplishing the purpose of the criminal law. It consists in defending society's fundamental values against those who violate the legal order. Naturally, it coincides with that of criminal law and policy.

This defense, protection, conservation cannot be achieved other than by trying not to commit dangerous acts in the future, i.e., preventing the commission of new offenses ante-factum. "*If it is considered that a legitimate function of the state is to achieve certain ideals of justice, criminal law will be understood as an instrument in the service of the values of justice. Criminal law could be justified as a socially useful tool*" (Bacigalupo 1994, 17).

In the specialized doctrine, different purposes are assigned to the punishment, such as: general prevention, special prevention, retribution.

According to absolute theories, punishment is an end in itself. As for relative and mixed theories, they assign to punishment a utilitarian or social purpose. Therefore, Maurach said that

absolute theories are theories of punishment, not theories regarding the purpose of punishment (Maurach, Zipf 1994).

In relation to the theories based on retribution, where the crime is seen as the evil to be fought, the purpose of the punishment is to answer for this evil through suffering.

Professor Vintilă Dongoroz (Dongoroz apud Tanoviceanu 1924-1927, 202) indicated that there is sometimes a confusion between the purpose of the punishment and its character. Society correlates the punishment with the committed deed, therefore, for the society, as well as for the perpetrator, the punishment will always have a retributive character, regardless of its foundation or purpose.

In preventive-integrative theories, where punishment is justified by its intrinsic value of preserving and reaffirming the feeling of fidelity to the norm, the punitive environment is identified with the purpose, in the sense that it is conceived as a good which becomes purpose in itself (Ferrajoli 1997, 239).

The theories promoting special prevention endorse the correctional purpose of the punishment, assigning to it, a priori, functions which are claimed to be satisfied, although they are not actually achieved or may not even be achievable (Ferrajoli 1997, 330).

The theory of negative general prevention assigns to punishment the purpose of preventing the commission of offenses. It has the merit of dissociating the means used in criminal law, conceived as evils to be suffered by the perpetrator, from the extra-criminal purposes. Being essentially an evil, punishment can be justified only if the harm it entails is less serious than the social reactions that could be triggered by the commission of the offense and only if the victim obtains the same satisfaction as from uncontrolled, unpredictable punishments (Ferrajoli 1997, 330).

5. The functions of punishment

The function represents the means or the activity, method or path through which the proposed goal can be fulfilled and achieved (Ungureanu 1995, 271). Thus, punishment has several functions, with the role of influencing the future conduct of the convict, as well as sounding the alarm also for other people, regarding the possible consequences that they would bear in case of committing an offense.

Axiologically, we cannot discuss the functions of punishment, since punishment does not have an objective manifestation, likely to give rise to such consequences, effects. However, in the sphere of criminal policy, punishment must fulfill certain functions, so that the punishment provided and applied could lead to the achievement of the proposed goal and must thus fulfill certain requirements, rigors. Therefore, the functions of punishment lead to the fulfillment of its purpose and have the particularity of alerting potential perpetrators to the consequences of committing an illegal act. In the Romanian criminal law, the following are stipulated as functions of punishment: the coercion function, the re-education function and the exemplary function (Bulai 1997, 286-288).

The French legal system, from which our criminal law has drawn inspiration, enshrines as functions of punishment the function of: intimidation, retribution and rehabilitation (Stefani, Lavasseur 1997, 362-367).

In the Italian criminal law, the functions of punishment are circumscribed to the main ideas of retribution, intimidation and re-education, remarking that with the entry into force of the Republican Constitution, due to the influence of the discoveries in the field of criminology and sociology, which promoted the idea of general prevention, the focus is on the non-retributive mechanisms.

Thus, viewed from a retributive perspective, the main functions of the punishment are: reproach and blame. Blame is a real and indisputable social fact. Émile Durkheim stated that

the offense provokes a "*passionate reaction. All the offenses provoke a more or less violent emotional reaction, which turns against the offender*" (Cusson 1987, 83).

In this context, the formal retribution function aims to regulate the relations between two parties. It is the resultant which appears, which is offered in exchange for the offense. The promoters and supporters of the retribution function consider that the punishment is applied to the criminal, as he/she committed an offense and not for the purpose of preventing or fighting crime. For example, the criminals of the Nazi regime are punished in order to do justice and not for prevention.

Another function, that of guarantee, is an inevitable effect of retribution, so that every time a person commits an offense, he/she will bear the application and enforcement of the correlative punishment.

Supporters of retribution reproach the supporters of utilitarianism the fact that they instrumentalize the person, that they use him/her for preventive purposes and that in applying the punishment, their theory could lead to exaggerated sanctions compared to the gravity of the deed, even up to the punishment of an innocent person.

From **a preventionist perspective**, punishment has the following functions: general and special intimidation. Through the intimidation function, both the perpetrator and the individuals tempted to follow the example of the punished person are targeted. According to this function, the punishment works as an intimidating force from the moment it was stipulated in the law and it amplifies at the moment of its application and enforcement. In order for the intimidation to be effective, it is necessary for the application of punishments to have a certain consistency. The more regularly a criminal system works, the more intimidating the effect (Diaconu 2001, 111-112).

Neutralization or elimination is the way in which punishment works with maximum intensity for the social defense. Elimination can be temporary or permanent and can be carried out by the application of a prison sentence (Bulai 1997, 266).

Resocialization. This term was introduced into the legislation by E. Smidth. The concept of resocialization appears for the first time in the specialized literature after the First World War, in order to replace the term "correction" (to make better, to correct the delinquent). Resocialization is usually defined in antithesis with other terms, in particular that of "retribution". Thus, it manages to cover a very wide range of directions, starting from anti-retributivism and reaching neo-retributivism. In general, re-education is seen and wants to be perceived as, a real instrument able to influence the mentality of the convict (Pascu 2014, 373).

Thus, re-education consists in influencing the mentality and skills of the convict, in the sense of removing his/her antisocial attitudes and training other attitudes, corresponding to the requirements imposed by the society at a certain time (Diaconu 2001, 108), serving special prevention.

The re-education function has the role of completing the coercion function, there being a close connection between the two, since one cannot exist without the other. Coercion cannot lead to the achievement of the purpose of the punishment without a transformation of the convict, through the function of re-education. In order to carry out the activity of re-education of the convict, the foundations of an entire system of methods and means of education were laid. On the occasion of his/her criminal prosecution, an appeal is made to his/her conscience, indicating the committed offense, as well as the social disapproval. During the enforcement of the punishment, the convict is subjected to a complex system of training and raising of the cultural level. He/she is recommended to learn a job and is subject to an action of moralization, i.e., understanding the norms and moral requirements existing in society, and after serving his/her sentence, he/she is helped to find a job suitable to his/her skills (Oancea 1995, 206).

Exemplariness consists in the influence that the punishment of perpetrators has on other subjects, who, seeing the consequences they have to bear, will refrain from committing offenses, the so-called self-censorship. However, this function is conditioned by the speed and

promptness of prosecuting those who have committed offenses (Ungureanu 1995, 271), thus serving the general prevention.

Coercion derives from the nature of the punishment as a measure of coercion and consists in the intentional infliction of physical, material or moral suffering to the perpetrator, the obligation of the perpetrator to do or not to do something. The coercive function can be achieved by applying and imposing a fine, by imprisonment which consists in the deprivation of liberty, where the convict is removed from his/her family, is supervised and numerous restrictions are imposed on him/her.

Coercion can be seen as a deprivation of the perpetrator of material (money) or moral (rights) goods. Coercion can also be performed in the framework of the enforcement of the punishment in places of detention, or coercion of a moral nature which is felt at the moment of classifying the committed deed as an offense. These types of constraints have the ability to influence the convict to reflect on his/her past and future conduct. The coercion function helps post factum, special prevention. Coercion, as an instrument of achieving the usefulness of the punishment, must not cause suffering to the convict, other than those permitted by law. This is mentioned in the Constitution in art. 22 para. 2: "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".

The function of ***elimination*** consists in the removal, temporary or permanent isolation (Lefterache 2018, 236) of the convict from society, through the application and enforcement of a custodial sentence (Boroi 2017, 447). In this way, the society is protected from the danger he/she would pose to it. Elimination contributes to the re-education of the convict, as well as to the change in his/her attitude towards the social values protected and promoted by the criminal law. Thus, it serves general and special prevention at the same time.

6. Principles governing the institution of criminal law sanctions

Sanctions of the criminal law and, implicitly, punishments, as fundamental institutions of criminal law are governed by certain basic, general ideas, in the absence of which their establishment and application would be incomplete and inaccurate. Some of the principles of criminal law sanctions are common to other fundamental institutions, but within criminal law sanctions, they act in a specific way. Thus, the principles of criminal law sanctions are considered to be: legality, humanism, revocability, individualization and personality.

Legality. The sanction must be established by the state, through its competent bodies and only under the law. This basic rule constitutes a limitation on the punishment, with the specification that only that measure of coercion which is clearly stipulated in the law becomes a punishment, as there can be no punishments outside the law ("*nulla poena sine lege*") (Oancea 1995, 200).

This legal norm ensures the prior knowledge, by the citizens, of the criminal sanctions corresponding to the incriminated deeds, thus realizing the preventive function of the criminal law by the simple fact of the provision of the sanction in the incrimination norm.

According to this principle, the incrimination norm provides, in addition to the description of the content of the offense and the applicable sanction, its duration and amount. Thus, it was established that, according to the degree of determination, there are three types of sanctions: absolutely determined (the only such sanction is life imprisonment), relatively determined sanctions, i.e., those determined by their nature - imprisonment or fine - and by general and special minimum and maximum limits (these being the most numerous sanctions) and undetermined sanctions - which are designated only by denomination, without the duration (this category includes security measures) (Ungureanu 1995, 269).

Humanism. This principle refers directly to the social-moral component of the punishment. Thus, criminal law must stipulate only those sanctions which are in accordance with the moral and legal consciousness of the society. Therefore, in the Romanian criminal

law, sanctions which, by being enforced, cause physical suffering, torment or torture or that would degrade the human being are not accepted (Streteanu, Nițu 2014, 286). The principle of humanism (Rotaru 2005, 350) must be respected in all the stages of the criminal repression: in the activity of establishing the sanctions, in their concrete individualization by the court, but also during their enforcement (Drăghici 2006, 378). Respecting the principle of humanism defends the human being with all of his/her attributes, the rule of law, as well as all the social values.

Revocability. It consists in retracting the applied sanctions, when it is established that they were ordered based on an error or there is no need to apply them. Thus, the prison sentence or the fine, the security or the educational measures can be revoked. However, the death penalty cannot be revoked (this being one of the causes which determined its abrogation from the Romanian Criminal Code).

Individualization. It means the adaptation (Mitra 2015, 29; Ancel, Hergoz 1954, 83) of the punishment, establishing and applying it quantitatively and qualitatively in relation to the concrete threat posed by the deed, but also of the threat posed by the perpetrator. In doing so, in the case of offenses against a person or against the state's security, the Criminal Code provides severe sanctions with higher limits, as they are considered offenses of great seriousness, whereas for lighter offenses, softer sanctions and with lower limits are provided.

Only by respecting this principle, the sanction becomes effective in generating transformations in the conscience of the perpetrator, in the sense of being able to prevent the commission of new offenses in the future. Individualization has several forms, depending on the existing procedural stage: legal, judicial or administrative.

Personality. It stipulates that the sanctions apply exclusively to the persons who commit offenses or have contributed in any way to the commission of any deed stipulated in criminal law (Mitrache & Mitrache 2012, 199). The strictly personal character derives from the nature and purpose of criminal law sanctions.

The aim of this principle is for the applied sanction to affect only the person who commits or contributes to the commission of an offense, not other persons. That is why, in the case of the fine, it must be set in such a way as not to put the convict in a position to no longer be able to fulfill his/her obligations regarding the natural activity of maintenance, upbringing, education and ensuring the professional training of those to whom he/she has legal obligations. Thus, the application and enforcement of a punishment must not have direct repercussions on the family members of the perpetrator or on his/her heirs. If the perpetrator dies, the sanctions are not transmitted to other persons and their enforcement ceases automatically.

7. Conclusions and proposals

Sanction is the third fundamental institution of criminal law, after the institution of the offense and that of criminal liability, representing the main means of defending against offenses the essential social values of our society.

The institution of sanction is one of the most important, interesting, and spectacular among the institutions of criminal law, through the vast issues it raises, but also through the solutions it has offered over time throughout various criminal legislations.

The main role of the punishment is to put an end to the criminal activity and to determine the change of the antisocial mentality of the perpetrator, through a series of modeling, coercive and educational actions.

Punishments are the central and fundamental element of legal and criminal regulations. In the first legal-criminal reports, those of compliance, the sanction stipulated expresses the abstract gravity of the incriminated deed and the warning addressed to all the recipients of the law regarding the consequences of not complying with the criminal law. In the content of the

legal-criminal conflict report, the sanction applied by the state appears as a normal consequence of criminal law, directly proportional to the concrete gravity of the deed, but also to the actual threat posed by the perpetrator.

Without fear of exaggerating, we can say that punishments are by far the most important criminal law sanctions, merging and sometimes even being confused with this branch of law. In fact, it has been argued that these are the toughest, harshest and most difficult to bear criminal law sanctions, given the fact that by applying and enforcing them, they have the particularity of affecting either the individual's freedom (Rotaru 2019, 270-271) or his/her patrimony.

The task of applying and enforcing punishment is a complex activity, full of challenges and uncertainties. It marks a particularly important stage in the fight against crime. The efficiency and effectiveness of the punishment is demonstrated when we witness an obvious decrease in recidivism and the resocialization of former convicts.

The application and enforcement of a punishment is a strong warning on the part of the state, in the sense that it demonstrates that it disapproves of this type of behavior, and the perpetrator must comply, since the enforcement of the punishment is not optional, but mandatory, it is not a mere formalism, but a true imperative.

References

Ancel, Marc, Bernard Jacques Hergoz.1954. *L'individualisation des measures prises à l' égard du délinquants [Individualization of the measures taken with regard to offenders].* Paris: Maison d'edition Cujas.

Antoniu, George, M. Popa, S. Daneş. 1998. *Codul penal pe înţelesul tuturor [Understanding the Criminal Code].* Bucharest: Politică Publishing House.

Bacigalupo, Enrique.1994. *Principios de Derecho Penal. Parte General [Principles of Criminal Law. General Part],* 3rd ed., Madrid.

Barac, Lidia. 1997. *Răspunderea şi sancţiunea juridică [Legal Liability and Sanction].* Bucharest: Lumina Lex Publishing House.

Basarab, Matei.1997. *Drept penal. Partea generală [Criminal law. The general part],* vol. I, Bucharest: Lumina Lex Publishing House.

Beccaria, Cesare. 2001. *Despre infracţiuni şi pedepse [About crimes and punishments].* Translated by Dora Scarlat. Bucharest: Rosetti Publishing House.

Betegon J. 1992. *La justification del castigo [The justification of punishment].* Madrid: Centro de Estudios Constitutionales.

Boroi, Alexandru. 2017. *Drept penal. Partea generală [Criminal law. The general part],* 3rd edition. Bucharest: C.H. Beck Publishing House.

Bulai, Constantin. 1997. *Manual de drept penal. Partea generală [Handbook of criminal law. The general part].* Bucharest: All Publishing House.

Codul penal [The Criminal Code]. 2021. Updated up to 01.02.2021. Bucharest: Hamangiu Publishing House.

Cusson, M. 1987. *Pourquoi punir [Why punish].* Paris: Dalloz, Paris.

Diaconu, Gheorghe. 2001. *Pedeapsa în dreptul penal [Punishment in criminal law].* Bucharest: Lumina Lex Publishing House.

Dongoroz, Vintilă and collaborators.1970. *Explicaţii teoretice ale Codului penal român [Theoretical explanations of the Romanian Criminal Code],* Vol. II. Bucharest: Academy of the Socialist Republic of Romania Publishing House.

Dongoroz, Vintilă. 2000. *Drept penal [Criminal Law].* Bucharest, 1939, reissued, Tempus Bucharest: Publishing House.

Donnedieu de Vabres.1947. *Traité de droit pénal et de législation criminelle compare [Treaty on Criminal Law and Comparative Criminal Law].* Paris.

Drăghici, Vasile. 2006. *Drept penal. Partea generală. Examinarea instituţiilor fundamente ale Dreptului penal, potrivit dispoziţiilor Codului penal în vigoare, ale Noului Cod Penal şi ale Proiectului de Lege pentru modificarea şi completarea Codului penal în vigoare, precum şi*

pentru modificarea şi completarea altor legi [Criminal law. The general part. Examination of the fundamental institutions of Criminal Law, according to the provisions of the Criminal Code in force, of the New Criminal Code and of the Draft Law for the amendment and completion of the Criminal Code in force, as well as for the amendment and completion of other laws]. Bucharest: Bren Publishing House.

Ferrajoli, Luigi.1997. *Derecho y razon - Teoria del garantisimo penal [Law and reason - Theory of criminal guarantees].* Madrid: Trotta Publishing House.

Ivan, Florean. 2001. *Drept penal. Partea generală [Criminal law. The general part].* Timișoara: Romanian University Press Publishing House.

Lefterache, Lavinia. 2018. *Drept penal. Partea generală [Criminal law. The general part].* Bucharest: Hamangiu Publishing House.

Maurach, Reinhart, H. Zipf. 1994. *Derecho Penal. Parte General [Criminal Law. General Part],* Translation 7th edition by Jorge Bofill. Buenos Aires: Ed. Astrea de Alfredo y Ricardo Depalifl.

Mitra, Mariana. 2015. *Drept penal, partea generală [Criminal law. The general part]*, Vol. I. Bucharest: Pro Universitaria Publishing House.

Mitrache, Constantin; Cristian Mitrache. 2012. *Drept penal român, partea generală [Criminal law. The general part],* Vol. I. Bucharest: Universul Juridic Publishing House.

Oancea, Ion.1995. *Tratat de drept penal. Partea generală [Criminal law treaty. The general part].* Bucharest: All Publishing House.

Pascu, Ilie and collaborators. 2014. *Noul Cod penal, comentat, partea generală [The New Criminal Code, with comments, the general part].* Bucharest: Universul Juridic Publishing House.

Pascu, Ilie, Vasile Drăghici. 2004. *Drept penal. Partea generală. Examinarea instituţiilor fundamentale ale Dreptului penal, potrivit dispoziţiilor Codului penal în vigoare şi ale Noului Cod Penal Penal [Criminal law. The general part. Examination of the fundamental institutions of Criminal Law, according to the provisions of the Criminal Code in force and of the New Criminal Code].* Bucharest: Lumina Lex Publishing House.

Rotaru, Cristina. 2006. *Fundamentul pedepsei. Teorii Moderne [The basis of punishment. Modern Theories].* Bucharest: C.H. Beck Publishing House.

Rotaru, Ioan-Gheorghe. 2005. *Istoria filosofiei, de la începuturi până la Renaştere [The history of philosophy, from the beginning to the Renaissance]*. Cluj-Napoca: Cluj University Press.

Rotaru, Ioan-Gheorghe. 2016. "Plea for Human Dignity." *Scientia Moralitas. Human Dignity - A Contemporary Perspectives* 1: 29-43.

Rotaru, Ioan-Gheorghe. 2019. *Om-Demnitate-Libertate. Adoptarea pentru prima dată pe pământ românesc, în Principatul Transilvaniei, a Principiului Libertății Religioase și evoluția acestuia într-un timp relativ scurt de 25 de ani (1543-1568) [Man-Dignity-Liberty. The Adopting for the First Time on Romanian Soil, in the Principality of Transylvania, of the Religious Freedom Principle and its Evolution in a relatively short time of 25 years (1543-1568)].* Cluj-Napoca: Risoprint Publishing House.

Stefani, G.; G. Lavasseur.1997. *Droit penal general [General criminal law],* 16th edition. Paris: Dalloz.

Streteanu, Florin, Daniel Nițu. 2014. *Drept penal, partea generală [Criminal law. The general part],* vol. II. Bucharest: Universul Juridic Publishing House.

Tanoviceanu, Ioan. 1924 -1927. *Tratat de drept și procedură penală [Treaty of Criminal Law and Procedure],* vol. III. Bucharest: Curierul judiciar Publishing House.

Udroiu, Mihail. 2020. *Sinteze de drept penal, partea generală [Synthesis of criminal law, general part].* Bucharest: C.H. Beck Publishing House.

Ungureanu, Augustin.1995. *Drept penal român. Partea generală [Romanian criminal law. The general part].* Bucharest: Lumina Lex Publishing House.