INTRODUCTORY COMPARATIVE STUDY ON THE 2009 ROMANIAN NEW CRIMINAL CODE AND THE PREVIOUS ROMANIAN CRIMINAL CODE

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Abstract

In this study, the author presents first the main reasons that led to the development of the 2009 Criminal Code and the objectives pursued by its wording.

Subsequently, the author presents the main novelties brought by the regulations contained in the General Part and the Special Part of the new Criminal Code.

Presentation of the characteristic features and innovations introduced by the 2009 Criminal Code compared to the Criminal Code of 1969 is achieved whilst revealing both the merits and some shortcomings of the new criminal law. These explanations are accompanied by numerous examples, own ideas and suggestions to improve the texts analyzed (de lege ferenda proposals).

In a final section, the author presents his own conclusions drawn in relation to the study of the new Criminal Code.

Keywords: *The Criminal Code of 1969, the new Criminal Code, indictment, crime, punishment.*

I. ***Introduction.*** **A. The new Criminal Code (hereinafter also referred to as the 2009 Criminal Code), enacted by Law no.** 286/2009 regarding the Criminal Code[1], a consistent legislative work and of great historical importance for Romania, according to art. 246 of Law no. 187/2012 for the implementation of Law no. 289/2009 regarding the Criminal Code[2], shall enter into force on 1st of February 2014, date when is to be repealed Law no. 15/1969 regarding the Criminal Code of Romania, republished[3] (hereinafter the Criminal Code of 1969 or the previous Criminal Code or the previous criminal law). The provisions of the new Criminal Code are covered by 446 articles, while the previous Criminal Code stipulated for 363 texts.

Law no. 286/2009 was enacted on June 25, 2009, pursuant to Art. 114 par. (3) of the Romanian Constitution republished, subsequent to the Romanian Government commitment of liability (decision taken on June 10, 2009[4]) before the Chamber of Deputies and the Senate.

B. The reasons behind the development of the new Criminal Code, as drawn from the explanatory memorandum to the draft Criminal Code[5] (hereinafter the Project), developed during 2006-2008 by a panel of renowned criminal law specialists (academics and practitioners)[6] and from its preliminary theses adopted

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[1] Published in the "Official Gazette of Romania" Part I, no. 510 of July 24, 2009, as subsequently amended and supplemented.

[2] Published in the "Official Gazette of Romania" Part I, no. 757 of November 12, 2012.

[3] Republished in the "Official Gazette of Romania" Part I, no. 65 of July 16, 1997, as subsequently amended and supplemented.

[4] In this respect, see the press release provided by the Ministry of Justice on June 10, 2009, available at http://www.just.ro/Sections/Comunicate/Comunicateiunie2009/10iunie2009/tabid/1073/Default.aspx

[5] The draft of the new Criminal Code is available at http://www.just.ro/MeniuStanga/Normativepapers/Proiectedeactenormativeaflate%C3%AEndezbatere/tabid/93/Default.aspx, posted on the website of the Ministry of Justice on January 24, 2008 (last visited on 10 March 2012).

[6] Commission for drafting the Criminal Code, established at the Ministry of Justice, according to the provisions of art. 26 of Law no. 24/2000 on the legislative technique rules for drafting laws, republished, subsequently amended and supplemented, had the following composition: Katalin-Barbara Kibedi prosecutor, advisor to the Minister of Justice, President of the Commission; Valerian Cioclei, PhD, Faculty of Law, University of Bucharest; Ilie Pascu, PhD, Faculty of Law and Administrative Sciences, „Andrei

by Government Decision no. 1183/2008 for the approval of the preliminary thesis of the Criminal Code draft[7], were:

1. the profound political, social and economic *changes* which took place in the Romanian society during the four decades that have passed since the entry into force of the previous Criminal Code (January 1, 1969), especially after 1989 when the communist regime was replaced by the capitalist one;

2. a number of *shortcomings* existing under the rule of the Criminal Code of 1969, highlighted both by practice and legal literature. Thus, the criminal sanctioning system established by the previous criminal law subject to frequent legislative intervention on various institutions (after republishing the previous Criminal Code of 1997, the latter was 26 times amended) led to inconsistent application and interpretation that lacked coherence of the criminal law, with consequences on the effectiveness and purpose of justice. Also, the decision to draft a new criminal code was based on the shortcomings of Law no. 301/2004 (the Criminal Code), too,[8], through which the first new Criminal Code (French inspired) reported by the legal literature had been enacted;

3. need for *punitive treatment readjustment within normal limits*;

4. *simplifying* as much as possible the *indictment rules*, *avoiding overlaps* between different indictments or texts of the General Part; where a circumstance is set out in the General Part as general aggravating circumstance, it does not have to be reinstituted in the indictments covered by the Special Part, but and the general text is to be applied;

5. *including*, in the contents of the Criminal Code, some offenses laid down in special criminal laws or special laws with criminal provisions and which have a higher frequency in legal practice (road traffic offenses, computer crimes, offenses of corruption and so on), to ensure uniform criminal offenses regulation. Thus, it was considered that all those inculpative deeds should be brought under special laws which actually deserve a criminal sanction, and, in these cases, the inculpatory text should be designed to integrate into the code structure.

To these grounds we would add *the progress of criminal science and legal thinking* over the 40 years of implementation of the Criminal Code of 1969, during which new visions appeared on crime, new criminal schools, that have combined the classical criminal theory demands with those of the positivism, theories which were reflected in the advanced countries legislation by introducing new penal institutions and by using new methods of offender rehabilitation and crime prevention.[9].

But, in our view, such general criminal law was necessary also because there is a certain *evolution of crime* which, in addition to recrudescence (due not only to the impoverishment of the population and globally increased unemployment), knows a development of certain criminal activities organized character, enters increasingly higher society spheres, sometimes influencing those entitled to make important decisions to this purpose.

For preparing the new criminal law, the Commission sought on the one hand to capitalize the Romanian criminal law tradition, and on the other hand, to align it to some benchmark legal systems from the European criminal law. These two directions considered when drafting the Code were able to be reconciled through careful analysis of the Romanian criminal legislation evolution.

For *our criminal laws tradition capitalization* they started from the Criminal Code of 1937 (inspired by the Italian and Austrian ones), most of them also preserved by the Criminal Code of 1969, whilst considering that, even now, the most influential criminal regulations in the European law belong to the German and

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During the project preparation process, the Commission worked with and was supported by renowned experts in the field such as: Jean Pradel, PhD, professor emeritus of the University of Poitiers, Director of the "Academician Andrei Rădulescu" Institute for Legal Research within the Romanian Academy, Costică Bulai, PhD and Valerian Cioclei, PhD, both with the Faculty of Law of the University of Bucharest

[7] Published in the "Official Gazette of Romania" Part I, no. 686 of October 8, 2008.

[8] Published in the "Official Gazette of Romania" Part I, no. 575 of 29 June 2004. Its entry into force was however successively delayed through: Government Emergency Ordinance no. 58/2005, published in the Official Gazette of Romania, Part I, no. 552 of June 28, 2005; the Government Emergency Ordinance no. 50/2006, published in the Official Gazette of Romania, Part I, no. 566 of June 30, 2006 and the Government Emergency Ordinance no. 73/2008, published in the Official Gazette of Romania, Part I, no. 440 of June 12, 2008), until September 1, 2009. Pursuant to art. 446 par. (1) and (2) of Law no. 286/2009, Law No. 301/2004 was repealed without ever entering into force.

[9] See George Antoniu, *New criminal legislation. Preliminary Reflections,* in the "New criminal legislation: tradition, recoding, reform, legal progress", vol. I, Universul Juridic Publishing House, Bucharest, 2012, p. 22.

Italian area. Convergence of regulations in the new Criminal Code with those in the said legislation, as well as those they have inspired (Spanish, Swiss, and Portuguese law) without editors to ignore the solutions adopted by other European systems, such as the French Belgian, Dutch law or that of some Scandinavian countries, allowed the creative capitalization of national tradition along with the development of regulations consistent with current trends in criminal law of European countries with an advanced experience in this field.

Some of the institutions specific to the Romanian criminal legislation (some introduced by the Criminal Code of 1969) were *preserved* whereas, in the Commission's view, they have proved their functionality [for example, the (mandatory) application, subsequent to the final judgment of the case or improper participation, of the more favorable criminal law was maintained, although, in these assumptions, most legal systems are working with the mediated perpetrator's institution].

Finally, from Law 301/2004, especially from the preliminary draft prepared by the Institute for Legal Research "Academician Andrei Rădulescu" within the Romanian Academy[10] which led to the drafting of that law, a number of elements in line with the current trends of European criminal law were *taken* (supplementing the principle of legality of criminal offenses and criminal sanctions with the legal provision precedence rule in relation to facts and punishment, or the educational measure, or the safety measure which would be applied for committing the facts, waiving the social danger institution, victim's consent, etc.).

The new Criminal Code was developed following a thorough research of the traditional solutions laid down in our previous criminal codes (this explains why many of the Criminal Code of 1937 texts were "revived"; for example, the indictments relating to killing at the request of the victim - art . 190[11] or to insurance fraud - art. 245 or to the exploitation of vulnerable persons' property - art. 247 etc.), subsequent to identifying the experience of other criminal laws as well (in this regard, the efforts of the new criminal law drafters to indicate in the recitals the foreign source of inspiration for some new texts are commendable), and considering most of the critical alerts existing in the doctrine and jurisprudence, that arose after the entry into force of the Criminal Code of 1969 [in this regard, the new Criminal Code drafting commission's desire to settle as many disputes arising in connection with certain texts from the previous criminal law should be noted, for example, the provisions relating to: the continued criminal offense - art. 35 par. (1), the assimilated public servant - art. 175 par. (2), manslaughter - art. 192, newborn murder by the mother - art. 200 par. (1), bribery - art. 289 par. (2), etc.].

C. When elaborating the new Criminal Code, the drafting committee thereof (hereinafter referred to as the commission) sought and mostly succeeded to meet the following **objectives**:

1. creating a coherent legal framework in criminal matters, avoiding unnecessary duplication of existing rules in force in the Criminal Code and in the special criminal laws or special laws with criminal provisions; this indictment excess which was prevalent in the Romanian positive law, after 1989, was frequently and rightly criticized in the legal literature[12] because it was not the best solution for preventing and combating crime, since it continued to increase steadily;

2. *simplifying* the rules on criminal substantive law designed to facilitate criminal judicial bodies' uniform and prompt application thereof;

3. ensuring the meeting of the requirements arising from the *fundamental principles* of criminal law enshrined in the Constitution of 1991, as revised in 2003[13] and in the covenants and treaties on fundamental human rights to which Romania is a party;

4. *transposing the regulations adopted at EU level in the national criminal law*; achieving this goal is a constant concern of the Romanian criminal legislator and, after the enactment of the new Criminal Code (e.g., Law no. 63/2012 for the amendment and completion of the Criminal Code of Romania and Law no. 286/2009 regarding the Criminal Code[14] has transposed into the domestic law art. 3 of the Framework

[10] Published in the "Journal of Criminal Law" no. 3/2002, p. 127-156.

[11] For reasons of space, in this paper, where the legislative act is not indicated by an article number, we consider the Criminal Code enacted by Law no. 286/2009, as subsequently amended and completed.

[12] See: Gheorghe Diaconescu, *Offenses under special laws and Non-Criminal law*, Sirius Publishing House, Bucharest, 1994, p. 134, Idem, *Offenses under special laws and Non-Criminal law*, All Publishing House, Bucharest, 1996, p. 76, 180. The late criminal law expert was expressing the very idea that this mega-normativism, especially by indictment of deeds insignificant in terms of social danger, is a legislative abuse and in some cases it unnecessarily duplicates the Criminal Code existing indictment rules. For the same purposes: Constantin Duvac, *Criminal offences apparent multiplicity*, Universul Juridic Publishing House, Bucharest, 2008, p. 56; Andreea-Alexandra Popa, *Counterfeiting a patent object*, in "Romanian Journal of intellectual property law", no. 3/2008, p. 133; Valerian Cioclei, *Critique of criminal reasoning. Legal criminology and criminal law studies*, C. H. Beck Publishing House, Bucharest, 2009, p. 6-10, 13.

[13] Law amending the Constitution was published in the "Official Gazette of Romania" Part I, no. 669 of September 22, 2003.

[14] Published in the "Official Gazette of Romania" Part I, no. 258 of 19 April 2012.

Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property[15]);

5. *harmonizing the Romanian criminal law with the systems of other European Unio*n member states, as a prerequisite of judicial cooperation in criminal matters based on mutual recognition and mutual trust. It is worth mentioning that Law no. 302/2004 on international judicial cooperation in criminal matters[16] duly ensures the legal framework necessary for such cooperation in fighting cross-border crime[17].

The solutions adopted by the legislator did not always coincide with those the Commission has been proposing through the Project; the essential differences are to be outlined below, both the Senate Judiciary Committee and that of the Chamber of Deputies bringing numerous and often justified changes in the solutions originally proposed, their members thus contributing significantly to elaborating the new criminal Code of 2009.

II. ***General Considerations.*** The texts of the new Criminal Code are divided into two parts: the general part and the special part. Each part is in its turn divided into titles, chapters and sections joined together organically.

To easy identify and use the s of the new Criminal Code, the provisions of each article were given a synthetic marginal name; those marginal names had no other role than that of indicating these rules *(legis non este lex Section*).

The new Criminal Code keeps the previously established by the Criminal Code terminology (e.g., offense „under" article..., the provision "of" article...; punishment "prescribed" by law; punishment "determined" by the judge; punishment "enforced", measure "taken", and so on).

The new Criminal Code does not provide a title on transitional situations; the latter are to be addressed under the provisions relating to the temporal enforcement of the criminal law, or under the provisions of Law no. 187/2012.

A. The main novelties brought by the regulations contained in the **General Part** (art. 1 to 187) of the new Criminal Code are:

1. The provisions of this Part of the new Criminal Code were **systematized** whilst following a logical succession of the matter, in 10 titles [Title I - Criminal law and limitations of application thereof (art. 1 to 14); Title II - Criminal Offense (art. 15 to 52); Title III - Punishments (art. 53 to 106); Title IV - Safety measures (art. 107 to 112^1); Title V - Minority (art. 113 to 134); Title VI - Legal persons' criminal liability (art. 135 to 151); Title VII - Causes removing criminal liability (Art. 152 to 159); Title VIII - Causes removing or changing the execution of punishment (art. 160 to 164); Title IX - Causes removing the consequences of conviction (art. 165 to 171); Title X - Meaning of some terms or phrases in the criminal law (art. 172 to 187)], of which the first 6 containing several chapters.

The Criminal Code of 1969 was *systematizing* the General Part (art. 1 to 154) in eight titles [Title I - Criminal law and limitations of application thereof (art. 1 to 16); Title II - Criminal Offense (art. 17 to 51); Title III - Punishments (art. 52 to 89); Title IV - Replacing criminal liability (Art. 90 to 98); Title V - Minority (art. 99 to 110^1); Title IV - Safety measures (art. 111 to 118^2) Title VII - Causes removing criminal liability or the consequences of conviction (Art. 119 to 139); Title VIII - Meaning of some terms or phrases in the criminal law (art. 140 to 154)], all, except for Title IV, V and the final one, consisting of several chapters.

The General Part of the new Criminal Code contains provisions on everything essential and common to the three basic institutions of the Romanian criminal law: criminal offense, criminal liability and criminal sanctions. They duly complement all requirements of the Special Part and the criminal provisions of the Non-Criminal special laws except where they derogate of the common law [for example, the provision of art. 77 letter a) – offense committed by three or more people together - will no longer be applicable where desertion is committed by two or more militaries together - art. 414 par. (2) letter a); in this case, the special rule prevails over the general one].

2. In terms of regulations on **Criminal law and limitations of application thereof** (art. 1-14) the rule concerning the purpose of the criminal law has been dropped (art. 1 of the previous Criminal Code), and the

[15] Published in the "Official Journal of the European Union" L series, no. 68 of 15 March 2005.

[16] Published in the "Official Gazette of Romania" Part I, no. 594 of July 1, 2004, as subsequently amended and supplemented.

[17] For details, see Constantin Duvac, *Some critical comments on the draft of a second new Criminal Code*, in: "Romanian Journal of Criminology" no. 4/2009, p. 147-153; "Cross-border crime at the border between present and future", bilingual (Romanian-Hungarian) edition, T.K.K. Debrecen, Hungary, 2009, p. 91-106, 373-390.

principle of legality of indictment and criminal sanctions (art. 2 of the Criminal Code of 1969) was regulated in two distinct texts (art. 1 and 2), the idea of the criminal provision precedence (in both its components: the precept and the sanction) in relation to the actual deed being also introduced explicitly in its content.

Principles governing the matter of *temporal criminal law enforcement* (art. 3 to 7) have been reconsidered to ensure full compatibility with the provisions of art. 15 par. (2) of the Romanian Constitution, republished. Among these, the principle of the voluntary enforcement of the criminal law which is more favorable in the case of final punishment was abandoned (art. 15 of the criminal Code of 1969), thereby increasing (even partially) the observance of the principle of res judicata the final judgments in criminal courts should enjoy. Even if this solution led to the making of an important step forward in reforming our criminal law, the legislature of 2009 should have given up the mandatory enforcement of the criminal law which was more favorable in the case of the final punishment (art. 14 of the previous Criminal Law).

This solution, characteristic for the Romanian criminal law regardless of the justification given for it is, essentially, but an interference of the legislator in the work of the judiciary, in violation of the principle of inviolability of res judicata, and isolates us from the rest of criminal regulations in well-established countries in terms of criminal sciences (e.g., Germany, Italy, France), and therefore, de lege ferenda, we reiterate[18] the proposal to remove (repeal) art. 6 (more favorable criminal law enforcement after the final judgment of the case).

The only derogation of the principle of inviolability of res judicata which would be allowed might be the decriminalization law that may take effect both on the final conviction and on the other consequences that could result from this.

De lege ferenda, this chapter would require the introduction of a rule to discipline the content and principles for settling the criminal rules or texts' concurrence either by taking the Italian or the Spanish model adapted to our social and legal realities, or by one's own wording, given that this issue is not treated consistently in the legal literature and jurisprudence, and on the other hand, recent years have seen a tendency to increase artificially the concurrence of criminal texts, indicating a flawed legislative technique, susceptible of controversy and difficulty in enforcing the criminal law.[19]. This trend was expressly recognized by the Romanian legislator when the Government Decision no. 1183/2008 noted that "there are currently about 250 special or Non-Criminal laws containing criminal provisions having numerous text overlapping, implicit repeals over which hovers uncertainty, with legal penalties between which there are flagrant differences despite the similar nature of the alleged criminal offenses, making them difficult to be enforced by the judicial bodies and very little predictable for citizens", so that only 3 years later, in the recitals of Law. 187/2012, to assert that their number has reached about 300 special criminal or Non-Criminal laws containing criminal provisions.

Concerning the matter of *territorial criminal law enforcement* (art. 8 to 14), the Romanian criminal law scope limits have been redesigned and reconfigured. For example, the content of the territoriality principle (art. 8) was better anchored, and the double indictment was introduced into the content of the personality principle (art.9). Also, the matter related to extradition (art. 14) was supplemented with different regulations concerning the delivery over or extradition of a person in relation to the Member States of the European Union or the delivery of a person over an international criminal court.

3. Criminal offense (art. 15 to 52), basic institution of criminal law, was significantly amended and supplemented with new provisions.

First, the definition of the criminal offense [art. 15 par. (1)] was redesigned, giving up the material conception of crime that was specific to the states under Soviet influence, and thus to social threat as a general feature of the criminal offense. The new legislative concept of *criminal offense* means "the deed stipulated by the criminal law, committed willfully, unjustified and imputable to the person who has committed it"; this phrasing, unlike the definition proposed by the Project, provides for the mention "committed willfully".

The new Criminal Code keeps the principle that "criminal offense is the only basis for criminal liability" - art. 15 par. (2).

Within the forms of *guilt,*[20] (art. 16) *oblique intent* was explicitly defined and, in terms of the deed consisting of an action or inaction, was correctly established the rule that it is a crime when committed intentionally, negligence being the exception expressly provided by the criminal law in both cases (both the

[18] In this respect, see Constantin Duvac, *Some critical comments on the draft of a second new Criminal Code*, *cit. supra*, p. 150.

[19] Constantin Duvac, *Criminal offences apparent multiplicity*, *cit. supra,* p. 53-109.

[20] For a comprehensive approach to this institution, see George Antoniu, *Criminal guilt*, Romanian Academy Publishing House, Bucharest, 1995.

committed crime and the crime by omission). As such, in relation to the new regulation, crimes committed negligently by omission (unless the legislator intends to punish them also when committed by this form of guilt; an example in this respect is the crime of failure of notification, provided by art. 267) are exculpatory (for example, failure to denunciate - art. 266).

Also, *crime by omission* was regulated for the first time (art. 17), as assimilating inaction to action in the absence of a legal text constituted an analogy in *malam partem*, prohibited under criminal law.

The new Criminal Code systematizes the causes that exclude criminal offense, referred to in the previous criminal law as "cases removing the criminal nature of the deed" (Art. 44 to 51 of the Criminal Code of 1969) in two distinct chapters dedicated to the supporting causes (art. 18 to 22), respectively to the non-imputability causes (art. 23 to 31).

Supporting causes (art. 18 to 22), operating *in rem* were supplemented with two hypotheses, that is exercising a right or performance of an obligation (art. 21) and the victim's consent (art. 22).

The *non-imputability causes* regime (art. 23 to 31), which take effect *in personam* [unless Act of God[21] (art. 31) operating *in rem*], has been seriously amended, basically due to: the introduction of the no imputable excess (the excess justified by self-defense or a state of emergency) in this category of cases, reconfiguring the legal content of mistake of fact[22] or of law [has been waived the fiction in art. 51 the final paragraph of the Criminal Law absolutely setting out that "lack of knowledge or wrong knowledge of criminal law shall not remove the criminal nature of the deed", introducing provisions relating to the error of Non-Criminal law[23] or even Criminal Law (The offense under the criminal law committed as a result of lack of knowledge or wrong knowledge of its illicit nature, due to circumstances that could have not be avoided in any way, shall not be imputable to the perpetrator")].

When defining the *attempt*[24] (art. 32) the term "decision" was replaced with "intent", thereby ending the controversy about the possibility that this imperfect form be also committed with indirect intent, the legislator choosing rightly a positive response. Of the forms the attempt may take, the regulation related to the relatively improper attempt was rightly dropped.

The forms of criminal offense established by the 2009 Criminal Code is the *fait accompli* (this form is considered by the legislator when drafting the indictment rules specified in the Special Part of the Criminal Code) and attempted deed (tentative), which is sanctioned only when expressly provided by the law. The new Criminal Code keeps a easier punitive treatment for attempt than the one set for fait accompli, the punishment limits provided for this being narrowed to half.

Preparatory deeds are not indicted as such by the 2009 Criminal Code, but sometimes, exceptionally, they are assimilated to the attempt [art. 412 par. (2)] or indicted as standalone criminal offenses (art. 314 – Possession of instruments for counterfeiting values) or attached to the typical deed enforcement acts for the anticipated perpetration crime offenses (e.g., art. (289 - Bribery).

Although the new Criminal Code does not explicitly regulate the *fait accompli,* a form specific to criminal offenses alleged lasting (continuous, progressive, continued, of habit) the legislator implicitly recognizes this imperfect form in the provisions on the criminal liability limitation periods of art. 154 par. (2) and (3), which mentions the fait accompli moments: "the termination date of the action or inaction", "the perpetrating date of the last action or inaction", "the date of perpetrating the last deed" or the date of the "permanently produced outcome".

Unity and multiplicity of criminal offenses (art. 35-45) was significantly amended, and some special provisions were introduced by the 2009 legislator by art. 129 (multiplicity of criminal offenses) in Title V - The minority.

In the of criminal offenses unity matter, a first significant change relates to the continued offense which includes passive subject unity as a requisite to exist, - art. 35 par. (1). This requirement is limited by art. 238 of Law no. 187/2012 stipulating that when implementing this text, the passive subject unity requisite is deemed fulfilled also when the property which is the subject of the criminal offense is joint ownership of

[21] The 2009 legislator kept the Act of God in the Code, failing to accept Commission's proposal to waive it.

[22] Art. 30 - "(1) The deed under the criminal law committed by a person who, at the time of its commission, did not know the existence of a status, situations, or circumstances on which depends the criminal nature of the deed shall not be deemed an offense.

(2) Par. (1) shall also apply to offenses committed by negligence punished by the criminal law only if lack of knowledge of the respective status, situation or circumstance is not itself due to negligence.

(3) The circumstance the offender did not know about at the time of the offense shall not be a aggravated circumstance or aggravated circumstantial element".

[23] Art. 30 par. (3) - "The provisions of par. (1) - (3) shall apply accordingly also for lack of knowledge of a Non-Criminal provision".

[24] For a comprehensive approach to this institution, see George Antoniu, *Attempt (doctrine, jurisprudence, comparative law)*, Tempus Publishing House Company, Bucharest, 1996.

several persons; or when the offense affected different secondary passive subjects, but the main passive subject is unique.

However, proper criminal treatment is established for this type of criminal offense legal unity [art. 36 par. (1): "Continued criminal offense is punishable for the offense committed as prescribed by law; the maximum of the penalty may be increased by up to 3 years for imprisonment, or by up to one third for fine penalty"] and not through assimilation with that laid down for multiple offenses, as foreseen in art. 42 of the Criminal Code of 1969.

Also, in another title of the General Part, namely Title VII - Causes removing criminal liability - art. 154 par. (2) introduces new provisions relating to the moment upon which the criminal liability limitation period begins to run for the crimes of habit (upon the last deed perpetration date) and the progressive ones (upon the action or inaction perpetration date and is calculated in relation to the penalty corresponding to the definitive outcome).

Unlike the previous Criminal Code, the new criminal law no longer explicitly provides for the types of multiple criminal offenses, but it regulates, under art. 38, 41 and 44, three forms, namely the multiple offenses, relapse and the intermediate multiplicity; this means that the new Criminal Code took the stand that explicitly accepts a third form of multiple criminal offenses as well, namely the intermediate multiplicity along with multiple criminal offenses and relapse. As the border between the two forms of multiplicity (the multiple criminal offenses and relapse) is the judgment of conviction, it seems that a third form between those two (an intermediate one) would no longer be possible (*tertium non datur*) and hence nor required.

The new Criminal Code rightly tightens the criminal treatment applicable to the multiplicity of criminal offenses. For example, mandatory penalty increase is inserted for multiple criminal offenses only where imprisonment is set (cumulative sentencing system with mandatory penalty increase), arithmetic increase (of the aggregation) for the post-sentencing relapse or, for the post-enforceable relapse, the mandatory increase by half of the special limits of the statutory penalty related to the new offense.

The 2009 legislator kept the same criminal treatment for both type of cumulated offenses (real and ideal), although part of the doctrine[25] had suggested a differentiated regime thereof (cumulative sentencing system for real multiple criminal offenses and the absorption system for the ideal multiple criminal offenses), according to the tradition established by the Criminal Code of 1937 and to the pattern of modern foreign criminal laws.

In terms of relapse, the first references are made to its temporary nature, requiring that the second offense be committed prior to the restoration or the rehabilitation deadline. Relapse terms were altered (their limits increased to more than 1 year) to qualify as a repeat offender only those convicted and who have committed new criminal offenses of a certain degree of social danger; otherwise, the sanctions regime established for the intermediate multiplicity of offenses is in force. The second term of relapse can also be an oblique intent criminal offense. To determine the state of relapse, the court is obliged to take account of the sentence pronounced abroad. The new Criminal Code no longer stipulates the lesser relapse.

Under *criminal participation* (art. 46-52) the *joint perpetration* was explicitly established [art. 46 par. (2)], along with the perpetrator [art. 46 par. (1)], inciter (art. 47) and accomplice (art. 48) and indirect participation in committing a crime was kept (art. 52); the latter was supplemented with a new normative means relating to when the perpetrator deliberately commits the deed under the criminal law, and the perpetrators' share in committing the crime is achieved without fault or negligence.

Concealment and encouraging, if they were promised prior to or during the perpetration of a crime, in the new Criminal Code system are also considered acts of complicity (secondary participation acts) and not standalone criminal offenses even if they are not met after committing the criminal offense covered by the promise - art. 48 par. (2).

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[25] See Ioan I. Tanoviceanu, *Criminal Law Course*, vol. I, "Socec & Co" Graphic Workshops, Societatea Anonimă, Bucharest, 1912, p. 676. For the same purposes: Nicolae T. Buzea, *Principles of criminal law. Criminal offense*, vol. I, Institute of Graphic Arts „Albina Românească", Iaşi, 1937, p. 511; George Antoniu, *Reflections on the criminal offenses multiplicity*, in the "Journal of Criminal Law" no. 4/1999, p. 11; George Antoniu, *Criminal reform and some critical aspects of the criminal legislation in force (Critical examination of certain provisions of the Criminal Code. General Part*) in "Criminal law reform" by George Antoniu (coordinator and author), Emilian Dobrescu, Tiberiu Dianu, Gheorghe Stroe, Tudor Avrigeanu, Romanian Academy Publishing House, Bucharest, 2003, p. 124-125; Constantin Duvac, *"Criminal law reform" review*, Romanian Academy Publishing House, Bucharest, 2003, 339 p. by George Antoniu and others, in "Journal of Criminal Law" no. 1/2004, p. 159; Matei Basarab, the *Romanian Criminal Code's General Part from a European perspective*, in the "Journal of Criminal Law" no. 1/2004, p. 27; George Antoniu, *The New Criminal Code. The previous Criminal Code. Comparative study,* All Beck Publishing House, Bucharest, 2004, p. 20; Idem, *The New Criminal Code and the previous Criminal Code, comparative view. General Part,* in the "Journal of Criminal Law" no. 4/2004, p. 17; Constantin Duvac, *Criminal offences apparent multiplicity*, *cit. supra,* p. 111-112; Constantin Duvac, *Ideal cumulated offenses (formal), apparent or real multiplicity?* in "The Law" no. 2/2009, p. 134.

For direct participation, the new Criminal Code provides, as well, (art. 49) for the system where all participants in crime are punished with penalties ranging between the same limitations, and which has the possibility of diversifying judicial punishment in relation to the contribution of each participant in the actual deed and in relation to art. 74 - The general criteria for individualization of punishment.

For indirect participation, the criminal treatment applicable to the participants is determined differently by the mental status at the time of committing the actual deed (intent, negligence, no guilt).

In the special part of the new Criminal Code is provided for both the *natural multiplicity of offenders* (e.g., art. 198 – fighting or art. 376 - bigamy or art. 377 - Incest) and the *grouped multiplicity of offenders* (for example, art. 367 - setting up an organized criminal group).

4. Title III of the General Part of the new Criminal Code is dedicated to **punishment** (art. 53-106).

Main punishments (criminal penalties) under the new Criminal Code are: life imprisonment [only alternatively with the definite time imprisonment, except for the ordinary deed of genocide committed in time of war - art. 438 par. (2)]; imprisonment (from 15 days to 30 years) and fine - art. 53.

"No punishment can be established and enforced outside its general limits" - art. 2 par. (3).

In this matter, the 2009 legislator created a mechanism for the election and the application of the most appropriate sanctions, thus to ensure both a constraint proportionate to the gravity of the offense committed and to the offender's dangerousness and an effective way for the offender's social rehabilitation.

Fine (art. 61-64) has received a new content based on the day-fine system (designed to ensure a better individualization of the actually enforced punishment both in terms of proportionality and efficiency), but also a significantly expanded scope compared to the previous Criminal Code, by increasing the number of offenses for which it may be enforced both as a single punishment, and as an alternative to imprisonment.

For individuals, the amount corresponding to a day-fine, ranging between RON 10 and RON 500, is multiplied by the number of days-fine, which is between 30 days and 400 days - art. 61 par. (2) IInd Thesis.

For legal entities, the amount corresponding to a day-fine, ranging between RON 100 and RON 5,000, is multiplied by the number of days-fine, which is between 30 days and 600 days - art. 137 par. (2) IInd Thesis.

An innovation of the new Criminal Code refers to the possibility that the fine to be imposed in addition to imprisonment (cumulatively), if the offense committed was aimed at obtaining patrimony benefits - art. 62 par. (1).

Extrinsic punishments (deprivation of certain rights - art. 65) and *ancillary punishments* (deprivation of certain rights - art. 66, are laid down as adjoining punishments, and military degradation - art. 69 and publication of the final conviction sentence - art. 70).

Extrinsic punishment means deprivation of certain rights from the moment the conviction becomes final and until the execution, or until deprivation of liberty punishment is considered as performed - art. 54.

Deprivation of certain rights ancillary punishment was redesigned and diversified (art. 66 stipulates 15 rights whose exercise may be prohibited by the court for a period of 1 to 5 years, while art. 64 of the Criminal Code of 1969 provided for only 5 such rights) so as to provide the court with better individualization opportunities.

The relationship between ancillary punishments and the safety measures has also been reviewed; some penalties applicable in earlier legislation as safeguards which depended on the existence of a major punishment (prohibition to be in certain localities prohibition of return to the family home and deportation of foreigners) were transferred in the first category, in a relatively modified wording. Whereas such criminal penalties become incidental for committing offenses under the criminal law, the Commission, taking into account the specific nature as well, found it necessary to supplement direct repression expressed by the main sentence with different secondary repression reflected in these ancillary punishments.

Ancillary punishment depriving certain rights can be punishment if the main punishment set is imprisonment or fine and the court finds that, in relation to the nature and gravity of the offense, the circumstances of the case and the offender, this punishment is required.

Enforcement of the depriving certain rights punishment is mandatory when the law stipulates this punishment for the offense committed.

Execution of the depriving certain rights punishment commences from: the moment the sentence on fine penalty becomes final; the moment the sentence on suspension of execution of punishment under supervision becomes final; or after imprisonment, after total pardon or pardon of the residual penalty, after fulfillment of statute of limitations for the sentence or after the expiration of supervision related to the parole period - art. 68 par. (1).

Military degradation ancillary punishment means loss of military rank and of the right to wear the uniform upon the date of the final conviction.

Military degradation is mandatory [if the main punishment imposed to the accused militaries (active, reserve or vacating) for the offense, regardless of the guilt with which they have acted, is imprisonment exceeding 10 years or life imprisonment] and optional (if the main punishment imposed for intentional offenses is imprisonment for at least 5 years and not more than 10 years).

For *judicial individualization of punishment* (art. 74-106), the provisions introduced tried to avoid enforcement of punishments significantly different in terms of type or duration for similar deeds, avoiding the use of very general criteria.

The content of mitigating and aggravating circumstances (art. 75-79) was modified and their effects have been redesigned to achieve, where possible, a symmetrical attenuation or aggravation in case of retention thereof. Concurrence among mitigation and aggravation causes was better disciplined (art. 79).

New alternative ways to detention punishment enforcement [waiver of punishment enforcement (art. 80-82), postponement of punishment enforcement (art. 83-90)] were introduced and the suspension of sentence under supervision (art. 91-98) was better disciplined; renouncing at conditional suspension of execution of punishment institution. Release on parole (art. 99-106) is modified both as regards the conditions for granting thereof and the social rehabilitation of the sentenced person. These institutions increase the role of probation services charged with supervising the execution of the sentenced person's obligations established by the court in the cases and under the terms set out by the criminal law.

5. Safety measures (art. 107-112) provided for in the new Criminal Code as preventive criminal sanctions are: ordering medical treatment (art. 109); medical hospitalization (art. 110); prohibition to occupy a position or exercise a profession (art. 111); special confiscation (art. 112); extended confiscation (art. 112^1); these safety measures may be taken only where an unjustified offense under the criminal law has been committed, revealing the existence of a state of danger. According to the drafters of the new criminal law, it is not necessary that this deed to be imputable as well; thus, the safety measures can be ordered for a non-imputability case, but not for a justifying case.

Extended confiscation (art. 112^1) over other property than those referred to in art. 112) (special confiscation), in certain cases and circumstances, was introduced in the new Criminal Code by Law no. 63/2012.

At the same time, by the will of the legislator, whenever reference is made through special laws, through the Criminal Code or through the Code of Criminal Procedure, to Art. 112 of Law no. 286/2009, the reference shall be deemed made to art. 112 and 112^1 and whenever reference is made through special laws, through the Criminal Code or through the Code of Criminal Procedure, to confiscation as a safety measure, reference shall be deemed made also to the extended confiscation.

6. The provisions on **minority** (art. 113-134) are one of the central points of the reform introduced by the new Criminal Code.

At the Romanian doctrine's justified and repeated request[26], the age limit at which minor criminal liability enforcement is possible was maintained at 14, although the Commission had proposed its reduction to 13 years of age.

Minors aged between 14 and 16 are criminally liable only if it turns out that they committed the deed with discernment.

Minors reached the age of 16 are criminally liable according to the law - Art. 113 par. (3).

The main change brought in this matter refers to the complete withdrawal of the punishments applicable to minors who are criminally responsible, in favor of *educational measures* whose framework has been completely changed; these are divided into non-custodial or custodial. *non-custodial* educational measures are: civic training stage (art. 117); supervision (art. 118); gating for the weekend (art. 119), daily assistance (art. 120). *Custodial* educational measures are: hospitalization into educational centers (art. 124) and admission to a detention facility (art. 125).

The new Criminal Code establishes non-custodial educational measures enforcement for minors as a rule [art. 114 par. (1)], custodial measures are the exception and are reserved to serious offenses hypotheses

[26] See: George Antoniu, *Notes on a second preliminary draft of a new Criminal Code* (I), in "Journal of Criminal Law" no. 4/2007, p. 31. The author believes that, perhaps, the newer solution would have been to increase criminal liability limits, because life shows that juvenile offenders evince a lack of education in the family, school, immediate environment, reaching the age of 15-16 as complete strangers to our society's moral requirements. The fact that serious offenses are committed scattered from a very young age is not decisive in ascertaining criminal liability limits, but the general finding that young people are deprived of the most basic moral knowledge and skills right after turning 14 due to the family life crisis and the educational authority crisis; Constantin Duvac, *Some critical comments on a second draft of a new Criminal Code, cit. supra,* p. 150; Vasile Păvăleanu, *Comments on a new Criminal Code* published in the "Journal of Criminal Law" no. 1/2009, p. 27.

(those for which the punishment provided by law is imprisonment for 7 years or more or life imprisonment) or to minors who have committed several offenses [art. 114 par. (2)].

In all cases, according to the new regulations, educational measures do not lead to prohibition, disqualification or disability.

7. The new Criminal Code has kept basically the same **criminal liability regime related to legal persons** (art. 135-151), which, however, has received a special title (Title VI) in addition to the one introduced in the previous Criminal Code by Law No. 278/2006 for the amendment and completion of the Criminal Code and amending and supplementing other laws[27], with some amendments in terms of individualization of the penalties applicable (days-fine system introduction) or the effects of legal persons' merging and division.

2009 legislator keeps the model of direct responsibility of legal persons established by Law no. 278/2006. Thus, according to Art. 135, "(1) A legal person, other than the state and public authorities, shall be criminally liable for offenses committed in achieving the object of activity or for the purposes or on behalf of the legal person. (2) Public institutions shall not be criminally liable for offenses committed in the performance of activities that may not be the subject of private domain. (3) Legal persons' criminal liability shall not preclude criminal liability of individuals who contributed to the perpetration of the same deed".

In applying the provisions of art. 135, public authority means the authority expressly provided for in Title III, as well as in art. 140 and 142 of the republished Romanian Constitution, according to the authentic explanatory rule in art. 240 of Law no. 187/2012.

8. Causes removing criminal liability [amnesty (Art. 152), criminal liability limitation (art. 153-156), no prior complaint (art. 157), prior complaint withdrawal (art. 158) and reconciliation (art. 159)] have received a separate regulation in Title VII.

In the new legislative concept, prior complaint withdrawal removes criminal liability only from the person in respect of which the complaint was withdrawn *(in personam* effect); it does not produce effects on all participants in committing the crime (*in rem*).

Law no. 27/2012 for the amendment and completion of the Criminal Code of Romania and Law no. 286/2009 regarding the Criminal Code[28] brought amendments to criminal liability limitation and to the execution of the sentence limitation. As such, the imprescriptible criminal offenses framework in terms of criminal responsibility was supplemented with murder deeds and first degree murder, as well as intentional deeds, followed by victim's death [e.g. assaults or injuries causing death - art. 195, unlawful deprivation of liberty - art. 205 par. (4), rape - art. 218 par. (4), sexual assault - art. 219 par. (3), etc.]. At the same time, arguably, by exception from the provisions of art. 5, and in violation of art. 15 par. (2)[29] of the republished Romanian Constitution, it was also stipulated that, upon the entry into force of this provision, namely February 1, 2014, the limitation period shall not remove criminal liability neither for those offenses for which the general or particular limitation period has not been fulfilled. Provisions similar to those governing the criminal liability limitation were introduced by Law no. 27/2012 and in relation to the execution of the sentence limitation period, which is an institution regulated in the subsequent title.

A new provision also refers to crimes against sexual freedom and integrity committed against a minor, for which the limitation period begins to run from the date on which it became major, and if the minor died before reaching majority, the term shall begin to run from the date of its death.

9. Causes removing or changing the execution of punishment [pardon (art. 160) and the execution of punishment limitation (art. 161-164)] were systematized in Title VIII.

Unlike the previous regulation, pardon does not affect the punishments whose execution is suspended under surveillance, unless otherwise provided by the act of pardon.

A new provision also refers to the execution of the fine punishment limitation, interrupted also by replacing the obligation to pay the fine with the obligation to perform unpaid community service.

10. Causes removing the consequences of conviction [rehabilitation de jure (art. 165) and judicial rehabilitation (art. 166-171)] are provided for under Title IX, according to their different nature and the reasons behind their occurrence, and in some cases they have been amended or supplemented, as appropriate.

Maximum of imprisonment for which rehabilitation de jure occurs was extended from 1 year to 2 years; it also operates for imprisonment the execution of which was suspended under supervision.

Judicial rehabilitation periods were reduced against those in the previous Criminal Code.

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[27] Published in the "Official Gazette of Romania" Part I, no. 601 of July 12, 2006.

[28] Published in the "Official Gazette of Romania" Part I, no. 180 of 20 March 2012.

[29] "The law provides only for the future, except for the more favorable criminal or contraventional law".

11. The new Criminal Code establishes the definition of terms or phrases that basically do not fall under the technical terminology of the criminal law, but to which content specific to criminal law was assigned; Title X named **"The meaning of certain terms or phrases in the criminal law"** (art. 172-187). Whenever criminal law uses a term or phrase out of those shown in this Title, their meaning is provided therein unless the criminal law would stipulate otherwise. For instance, the notion of public servant for the purposes of criminal law is substantively different (wider) than the one given by the administrative law. This specific meaning, compared to that provided for in other fields of law, is explained in the criminal law as well, in the sense indicated in art. 173.

Compared to the previous legislation, the new Criminal Code includes some amendments and additions. Therefore, regarding the meaning of the term *criminal law* (art. 173), it was aligned to the constitutional regulations in force, including the organic law and emergency ordinance, but also the acts adopted prior to the current basic law, which at the entry into force constituted sources of criminal law (laws, decrees of the former State Council, decree-laws and so on).

By this mandatory explanatory rule, the 2009 criminal legislator rejected the opportunity to indict and punish through legal acts other than those specified (for example, through Government ordinances.[30] or Government decisions.[31]).

Explanatory rules on the term "the territory" and the phrase "crimes committed within the country" were eliminated from this title, and transferred to Title I - Criminal law and limitations of application thereof, Chapter I - Application of criminal law, section 2 - Territorial application of criminal law , being more closely related to the rules of criminal law territoriality principle [art. 8 par. (2), (3) and (4)].

In comparison with the previous Criminal Code, Title X was supplemented with new explanatory rules regarding the meaning of the phrases: "electronic payment instrument" (art. 180), "computer system and data" (art. 181) and "exploitation of a person" (art. 182).

Some texts have been redesigned; they were given a contents different than that provided for in the Criminal Code of 1969 [those concerning *"civil servant"* (art. 175), which, according to the new criminal law's editors had to be laid in accordance with the wording of other relevant legislations and international agreements, "family member" (art. 177) which also included the concept of "close relative", as well as some new categories, "state secret information and official documents" (art. 178); "deed committed in public" (art. 184) the legislator removing *potential stigma of publicity* from the sphere of factual circumstances; "wartime" (art. 185)]; others were simplified [the norm regarding the phrase "very serious consequences" (art. 183) kept only the value criterion; the notion of "public" (art. 176)], and some were improved by additions requested by the criminal doctrine and practice ["criminal law" (art. 173), "calculating time" (art. 186)], the remaining texts were kept in the form from the previous criminal law ["general provisions" (Art. 172), "committing a criminal offense" (art. 174), „weapons" (Art. 179); „punishment provided by law" (art. 1870].

B. 1. Examining the indictment rules set out in the **Special Part** (art. 188-446) of the new Criminal Code of 2009, several **distinguishing features** are drawn compared to the Criminal Code of 1969, as follows:

1.1. In terms of **systematization**, the new Criminal Code editors have dropped our previous criminal code configuration, first in favor of regulation related to offenses against the individuals and their rights, followed by those against patrimony and only after that of those regulating crimes that affect the state attributes or other fundamental social values. This configuration is found in the most recent European codes and reflects the current view on the place of the individuals and their rights and liberties in the hierarchy of protected values, including criminal protection.

Thus, the rules laid down in the Part Special of the new Criminal Code were grouped into 13 titles: [Title I - Offences against the person (art. 188-227), Title II - Offences against property (art. 228-256), Title III - Offences concerning State authority and border (art. 257-265), Title IV - Offences against the

[30] For this purpose, see art. 8 of Government Ordinance no. 27/1992 on the protection of the national cultural heritage, Published in the "Official Gazette of Romania" Part I, no. 215 of August 28, 1992, as amended and supplemented, text whereby "Crossing property belonging to the national cultural heritage over the border without authorization constitutes an offense and shall be punished with imprisonment from 2 years to 7 years and partial confiscation of wealth. Attempt is punishable. Should the property subject to the criminal offence are not found, the person concerned owes the related customs duties". Article 8 was repealed pursuant to art. 1 section 7 letter g) of Law no. 11/1994 on certain Government ordinances issued under Law no. 8/1992 empowering the Government to issue ordinances and authorizing contracting and guaranteeing external loans, published in the "Official Gazette of Romania" Part I, no. 65 of 14 March 1994.

[31] For this purpose, see art. 4 of Government Decision no. 108/1998 on the enforcement of claims with the original Health Insurance Fund and Health Special Fund, published in the Official Gazette of Romania, Part I, no. 99 of 3 March 1998, text stipulating that "Failure to submit statements in due time, use of other forms than those provided in the Annexes no. 1 and 2 or filling them with false information is punishable under Law no. 87/1994 (in force at that time - our bracket - *C.D.*) to combat tax evasion".

achievement of justice (art. 266-288), title V - Corruption and office offences (art. 289-309), Title VI - Forgery offences (art. 310-328); Title VII - Offences against public safety (art. 329-366), Title VIII - Offences affecting the relations of social cohabitation (art. 367-384), Title IX - Election offences (art. 385-393), Title X - Offences against national security (art. 394-412), Title XI - Offences against the fighting capacity of the armed forces (art. 413-437), title XII - Criminal offenses of genocide, crimes against humanity, and war crimes (art. 438-445), Title XIII - Final Provisions (art. 446)], each usually having multiple subdivisions.

In principle, the protected social relationships and the social values related to these relationships have also provided with the distinction criterion between those provisions.

The old regulation systematized the Specific Part matter (a 155-361) in 11 titles [Title I – Offences against state security (art. 155-173), Title II - Offences against the person (art. 174-207), Title II - Offences against property (art. 208-222), Title IV - Offences against public property (art. 223-235[32]); Title V - Offences against authority (art. 236-245); title VI – Offences that infringe upon activities of public interest or upon other activities regulated by law (art. 246-281[1]), Title VII - Forgery offences (art. 282-294), Title VIII – Offences against the legal rules established for certain economic activities (art. 295-302[2]), Title IX - Offences infringing upon relations that concern social community life (art. 303-330), Title X - Offences Romania's capacity of defense (art. 331-355); title XI – Offences Against Peace And Humankind (art. 356-361) and Final Provisions (art. 362-363)].

1.2. Special Part **content** has been prepared in accordance with that of the General Part so as to avoid including some derogations (of strict interpretation) from the General Part rules.

Essentially, the Special Part includes: the deeds laid down in the criminal law which in conjunction with the provision of art. 16 par. (6) may constitute offenses in the absence of supporting or unimputability causes; the nature and special limits of punishment; deeds to which interrupted or ineffective acts of execution and some procedural provisions on conditional initiation of criminal proceedings, for certain prior complaint filing offenses, or on its withdrawal or reconciliation effects.

259 texts were dedicated to the Special Part of the new Criminal Code, compared to 209 texts in the previous Criminal Code, the Commission no longer being required to reduce the number of rules under this part.

Increase in the coded indictments is due either to the taken over, with minor amendments, of the texts from the special legislation with criminal provisions (such as human trafficking, child trafficking, simple bankruptcy, fraudulent bankruptcy, computer fraud, illegally crossing the state border, etc.) or to introduction of new indictments (for example, killing at victim's request, unborn child injury, professional office trespass, invasion of privacy, breach of trust by defrauding the creditors, insurance fraud, embezzlement of public auctions, etc.), even if some were not required by our doctrine and judicial practice.

Given the importance of protected values and social relations, the stability or commission rate thereof, as appropriate, one should, *de lege ferenda*, reflect on whether is required to also encode some indictments such as terrorism, trafficking or illicit drug consumption, or those against intellectual property or even, not last, deeds against the environment.

1.3. Furthermore, the Commission sought and mostly also managed [an exception in this respect is, for example, the legal content of the aggravated theft offense (art. 229) which has no less than 16 circumstantial aggravation elements], to simplify the indictment rules, avoiding overlaps between different indictments, or to reduce the number of circumstantial aggravation circumstances that had correspondent among the aggravating circumstances provided for in the General Part of the Code.

Thus, where a circumstance is set out in the General Part as general aggravating circumstance, it was not reinstituted in the indictments covered by the Special Part, and the general text is to be applied. For example, under the provision of the General Part on the aggravating circumstance of committing the offense by three or more people together [art. 77 letter a)], they dropped, with some exceptions (possible leak of the Commission), the circumstantial aggravation element, consisting of committing the offense by two or more persons together; differentiating between one and two offenders can be properly achieved in terms of judicial individualization. From this point of view, *de lege ferenda*, the removal of the circumstance of committing these criminal offenses by two or more people together from the aggravated contents of the offenses referred to in art. 218 (rape) - art. 219 (sexual assault) would be required. The circumstance of the offense committed by two or more militaries together should equally be abandoned from the contents of art. 414 (desertion), - art. 418 (executive commander's coercion) and art. 433 par. (2) IInd Thesis (aggression against the sentry).

[32] Title IV (art. 223-235) was repealed in accordance with art. 1 section 100 of Law no. 140/1996 amending and supplementing the Criminal Code, published in the "Official Gazette of Romania" Part I, no. 289 of November 14, 1996.

1.4. Concurrently, in some cases, certain special circumstantial aggravation elements or similar versions of some typical indictments, or even stand-alone indictments, were repealed **without, thereby, achieving decriminalization** thereof. Therefore, *deception* is indicted under art. 244, being included in the category of those criminal offenses against property which is characterized by disregard of confidence and set out in Chapter III of Title II of the Special Part. The wording no longer includes par. (3), (4) and (5) of art. 215 of the previous Criminal Code, thereby giving the appearance of fraudulent misrepresentations decriminalization, should the deception be performed through cheques, or it has very serious consequences. But repealing the indictment rules set out in art. 215 par. (3), (4) and (5) of the Criminal Code of 1969 does not mean that this type of antisocial deeds were decriminalized[33]. These will be, in relation to art. 244, actual ways of committing the simple or aggravated deception offense, as appropriate.

The same reasoning also applies with regard to the deeds treated as deception offenses provided for in the previous Criminal Code. The new criminal law no longer stipulates some deeds treated as deception offenses, set out in art. 296 (measurement deceit) or in art. 297 (deceit on the quality of goods) of the Criminal Code of 1969; but these deeds, to the extent that they would be further committed[34], shall fall under the provisions of art. 244, also as a de facto possibility to commit deceit.

At the same time, the new criminal law no longer stipulates for the *receipt of undue benefits* offense (art. 256 of the previous Criminal Code) which does not mean that it was fully decriminalized. Replacing the expression "for the purpose of" from the legal content of bribery (art. 289) with the phrase "in connection with", the receipt of undue benefits became a de facto possibility in relation to the typical bribery [art. 289 par. (1)], being decriminalized only in terms of assimilated bribery [art. 289 par. (2)].

Repeal is not a synonym term for decriminalization, because the deed repealed may continue to be incriminated in another legal text, either by the same *nomen juris* (such as deception offense) or under a different name (for example, the defamatory denunciation offense referred to in art. 259 of the Criminal Code of 1969 shall be punishable under art. 268 which is marginally called "Misleading the judicial bodies"). A deed is decriminalized only when it no longer appears in any form in the new law (for example, abuse of office producing significant disturbance in the activity of a public law legal entity is no longer criminalized in the new criminal law).

1.5. Only **complete** (precept and sanction are contained in a single text), contextual criminal **rules** were provided for in the Special Part of the new Criminal Code, avoiding the use of **divided** criminal provisions (in blank, of reference or referral), such as for instance, exercising professions or activities without the right to (art. 348).

Furthermore, to remove the practical difficulties on delimiting the referring rules as against those of referral, through provision of art. 5 of Law no. 187/2012, the legal regime of referring and referral rules is also unified within the Criminal Law, in accordance with Law no. 24/2000 on the legislative technique rules for drafting laws, republished[35], abandoning the independence of the referring rule in relation to the rule from which it has borrowed the component that made it whole.

According to this text, "(1) Where a criminal rule refers to another specified rule which lends it one or more components, change in the completing rule also entails changes for the incomplete rule. (2) Should the completing rule be repealed, the incomplete rule shall keep all components taken over thereupon, including the punishment limitations as they existed at the date of repeal, unless otherwise provided by law".

1.6. The guilt form is not explicitly mentioned as a **subjective element** in the content of the indictment rules of the Special Part of the new Criminal Code, but only exceptionally, for the deeds implying action (e.g., art. 192 - manslaughter) or inaction [for example, art. 267 par. (2) - notification failure] punishable when committed by negligence; this solution is in accordance with the rule stated in art. 16 par. (6).

Terms equivalent to those used in art. 16 [for example, "in bad faith" - art. 378 par. (1) letter b) and c) - family abandonment] are sometimes used.

1.7. Punitive treatment for the offenses indicted in the Special Part was - according to the Commission - restored to its normal limits in order to express the contemporary vision on the role of punishment in the

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[33] By opposition, see: Gheorghe Ivan, *Criminal Law. The Special Part*, 2nd edition, C. H. Beck Publishing House, Bucharest, 2010, p. 314. On agreement deception and that through cheques, the author states that these are no longer indicted, "although factual reality do not claim such a decriminalization (*abolitio criminis*)"; Gheorghe Ivan, Marie-Claudia Ivan, *Some questionable innovations of the new Romanian Criminal Code*, in "Law" no. 11/2012, p. 100-102.

[34] For this purpose, see: The Supreme Court, Criminal Section, Judgment no. 4012/2001, in the "Journal of Criminal Law" no. 2/2003, p. 158, High Court of Cassation and Justice, Criminal Section, Judgment no. 5524/2003, in the "Journal of Criminal Law" no. 1/2005, p. 165.

[35] Republished in the "Official Gazette of Romania" Part I, no. 260 of April 21, 2010, as subsequently amended and supplemented.

social rehabilitation of persons who have committed criminal offenses[36]. In this view, the extent and intensity of criminal repression must remain within the limits set, primarily by reference to the importance of the injured social value for those who infringe criminal law for the first time, and shall be increased progressively for those who commit several offenses before being definitively sentenced, and especially for the subsequent offenders.

Therefore, the punishment limits specified in the Special Part should be correlated with the General Part provisions, allowing a proportionate aggravation of the punitive regime stipulated for multiple offenses and relapse, i.e. grounds for aggravating punishment applicable to the active subject of the offense.

Last but not least, it should be noted that the punishment limits specified in the Special Part of the Code are consistent with the limits set by most European Criminal Codes for similar criminal offenses, and with the punishment limits traditionally provided for by our law both in the previous codes and in the Criminal Code of 1969, prior to the amendments made by Law no. 140/1996.

This thesis, on which we have expressed some reservations on other occasions as well,[37], does not apply at all times. Therefore, for example, one should reflect on whether such drastic reduction of special punishment limitations provided for most crimes against property (e.g. theft, aggravated burglary, robbery, deception, and so on) will help reduce crime in the matter. In our opinion, the answer can only be negative. Timeliness of criminal repression and firmer action on the underlying causes of offenses against property could contribute to the decrease in the categories of inconvenient deeds or, where appropriate, the removal of damage caused through them.

As regards sanctioning the deeds covered by the Special Part, the new Criminal Code generally promotes the *single main punishment system*; alternative main punishments have been laid down only for the offenses which, in particular, may show significant differences in the abstract social danger.

Life imprisonment is stipulated for all situations alternatively with the definite time imprisonment, except for the ordinary deed of genocide committed in time of war - art. 438 par. (2) - when the punishment is life imprisonment.

Imprisonment set for certain criminal offenses has a particular minimum and maximum, its limits being determined.

For the more serious offenses, in addition to the main punishment, the additional punishment of *deprivation of rights* was also provided for and, in these cases, it shall apply mandatory.

In some cases, *specific non-imputability causes* have been laid down [art. 201 par. (6) – abortion art. 202 par. (6) - unborn child injury, art. 203 par. (2) - leaving without help a person in distress] or *special nonpunishment causes* (impunity) based either on the existence of certain kinship [art. 266 par. (2), - failure to denounce, art. 269 par. (3) - favoring the perpetrator, art. 270 par. (3) - concealment etc.], or on the perpetrator's self-denunciation [art. 268 par. (3) - misleading judicial bodies], or on a certain perpetrator's mental attitude [art. 198 par. (4) - fighting] or on a certain perpetrator's quality [art. 201 par. (7) – abortion art. 202 par. (7) - unborn child injury, etc.] or *special causes for reduction of sentence* (art. 411 - causes for reduction of sentence). All these causes shall be incidental only for the offenses they were expressly provided for, not having general application like those covered by the General Part of the new Criminal Code.

1.8. We should also note that the Special Part of the new Criminal Code does not provide for criminal offenses per se, but **indictments**, concept not to be confused with the offenses which are actual facts whose features correspond to those described in the indictment rule. Romanian legal literature correctly distinguishes between the **deed "laid down"** and the "actual" deed, but since the term offense is very often used in both ways even by the legislator, we will also use this concept to explain the various deeds "laid down" (indictment rules) in the Special Part of the new Criminal Code.

Therefore, the provisions of the Special Part of the new Criminal Code cover "offenses under the criminal law" the legislator refers to only in conventional terms as criminal offenses.

1.9. The Special Part of the new Criminal Code regulations specify the offense's **typical** (basic) **content** to which was often added an **aggravated content** (first degree or mitigated) or sometimes an **assimilated content** (in terms of indictment) and / or a **type-related** (in terms of punishment) **content**.

For legislative technique reasons, some aggravated versions were provided for in separate rules, compared to the basic version of the concerned indictment (e.g., aggravated theft - art. 229, compared to theft - art. 228).

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[36] For this purpose, see Government Decision no. 1183/2008.

[37] For details, see: Constantin Duvac, *Some critical comments on the draft of a second new Criminal Code*, *cit. supra*, p. 147-153. For the same purposes, See Gheorghe Branch Ivan, Mari-Claudia Ivan, *op. cit.*, p. 99-100.

In all these cases, the standard version (simple, basic) of offenses is taken over by the aggravated version, irrespective of whether they are stipulated by the same article or different indictment rules, and the offender is to be held liable for the offense punished more severely.

The same apparent multiplicity of offenses solution (actual criminal offense unit) is also required where the offender violates several aggravated versions (concurrence of aggravated versions or sub-versions) of the same typical deed.

The above solution, of aggravated version taking over the standard version, shall not be confused with the *type* versions situation (those cases where, within the same article and under the same marginal name, twice as many different deeds are indicted, hence, each with its own legal content), which are in fact stand alone criminal offenses, likely to constitute a series of offenses. For example, in art. 245 (insurance fraud) under a single nomen juris two different deeds are indicted (one in connection to the provision of goods and other on persons insurance) as distinct criminal offenses.

Attempt is punishable only for those serious offenses expressly provided by the new Criminal Code.

In accordance with the provision of art. 16 par. (5) of the Special Part of the new Criminal Code, certain praeter-deliberate criminal offenses were also provided for (e.g., art. 195 - assaults or injuries resulting in death), or certain praeter-deliberate forms of intended offenses [art. 205 par. (4) - unlawful deprivation of liberty, art. 218 par. (4) - rape and others], where the most serious outcome is due to the offender's guilt.

Otherwise, should the result exceed perpetrator's intent, the multiple offenses rules shall apply if the deed concerned is indicted and when that result is due to fault.

In other cases, the 2009 legislator expressly provided that multiple offenses rules shall apply [art. 192 par. (2), IInd Thesis - manslaughter, art. 244 par. (2) IInd Thesis - deception, art. 367 par. (3) - setting up an organized criminal group, and others].

1.10. The Special Part of the new Criminal Code indictments, the so-called common law offenses, are supplemented with the indictment rules of the non-criminal special laws containing criminal provisions[38] making up **the Special Part of criminal law**.

In this regard, the new Criminal Code kept the system whereby antisocial acts may also be provided for through non-criminal law provisions when those deeds would represent a criminal phenomenon specific to the activity and social relations specifically disciplined and protected by the said laws or emergency ordinances.

Law no. 187/2012 has reviewed all indictments set out in the non-criminal special laws so that they are in full compliance with the provisions of the new Criminal Code.

In all cases, special criminal rules refer to what is proper, specific to each criminal offense and they are supplemented with the rules covered by the new Criminal Code's General Part.

2. The **Special Part** of the new Criminal Code has introduced mainly the following **amendments:**

2.1. Offences against the person (art. 188-227) are grouped into nine chapters [chap. I - Offences against life (art. 188-192); chap. II - Offences against corporal integrity or health (art. 193-198); chap. III - Offenses committed against a family member (art. 199-200); chap. IV - Attacks on the unborn child (art. 201-202); chap. V - Offences relating to the obligation to assist those in distress (art. 203-204); chap. VI - Offences against personal liberty (art. 205-208); chap. VII - Trafficking and exploitation of vulnerable persons (art. 209-217); chap. VIII - Offences against sexual freedom and integrity (art. 218-223); chap. IX - Offences prejudicing home and private life (art. 224-227)].

Some indictments introduced express subsidiarity clauses using the wording "where the deed does not constitute a more serious offence" [art. 208 par. (2) - harassment, art. 216 - using the services of an exploited person], that violate the specialty principle and under which the main criminal rule set out in these texts becomes the subsidiary one if another, regardless of its location (the Criminal Code, special criminal laws or special laws criminal provisions), punishes more severely the actual deed.

With regard to *offences against life* (art. 188-192), we note the simplification of homicide regulation, by merging the two separate aggravated versions (second degree murder and first degree murder), referred to in

[38] Those provisions stipulating deeds which are punished under criminal law are considered criminal provisions. Sometimes special laws provide that the provisions of the Criminal Code shall apply if violation of those laws constitutes an offense. This being a reference rule, it is not a Criminal law provision of the special law, but a merely drawing attention, the provisions of the Criminal Code applying even in the absence of such statement. But when a special law provision indicts a certain deed and, in terms of classification and sanctioning thereof reference is made to a Criminal Code text, that provision, equating the deed punished with one of the deeds provided for in the Criminal Code, is a criminal provision and a referring rule [see, to that effect, Vintilă Dongoroz, *Deeds punishable under special laws (Final Provisions)*, in "Theoretical Explanations of the Romanian Criminal Code Special Part", vol. IV by Vintilă Dongoroz, Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stănoiu, Victor Roşca, Romanian Academy Publishing House, Bucharest, 1972, p. 963].

art. 175 and 176, both of the previous Criminal Code, while reducing by half the aggravating circumstantial elements (from 16 to 8), being covered by art. 189 only those circumstances conferring on the deed a certain dangerousness that clearly exceeds the possibilities for individualizing based on the punishment limits of the type version or of the basic version.

2009 legislator has indicted murder at the request of the victim as stand-alone criminal offense (art. 190), as a homicide attenuated version, thus replacing the regulation back on the path of the heritage existing in our law (art. 468 of the Criminal Code of 1937), and in accordance with some European codes.

Also, the content related to the manslaughter offence (art. 192) was simplified in terms of content in an inspired way, giving up part of the aggravated versions that can be filled without any problem by applying the rules for sanctioning multiple offences, even if they claimed[39] that giving up par. 4 of Art. 178 of the previous Criminal Code is not justified.

Under the Criminal Code of 1969, one of the liveliest disputes[40] was in relation to the legal classification of the manslaughter offense committed when driving a vehicle on public roads or tram by a person with an alcoholic concentration in blood of more than 0.80 g / l of pure alcohol, or concentration in breath out air exceeding 0.40 g / l of pure alcohol, two theses being thus outlined: one of the manslaughter complex offense, adopted by an advisory judgment[41], that is through referral in the interests of the law[42], i.e. solutions appropriated by some Romanian authors[43] and the other thesis, that of the series of offenses which is supported by most of the Romanian legal literature[44] and by some courts[45].

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[39] See George Antoniu, *Notes on a second preliminary draft of a new Criminal Code (II),* in "Journal of Law" no. 1/2008, p. 10. The author also argues that the sentence increase foreseen in art. 192 par. is outrageous (3), and that such amendments were suggested neither by the doctrine nor by jurisprudence.

[40] For details, see C. Duvac, *Manslaughter, complex offense?*, in the "Journal of Criminal Law" no. 1/2010, p. 116-126.

[41] See the Supreme Court, advisory judgment no. 2/1975, in: *Reports of Judgments 1975*, p 50; "Romanian journal of law" no. 10/1975, p. 33-35.

[42] See the High Court of Cassation and Justice, Joint Sections, Judgment no. I of 15 January 2007, available at http://www.scj.ro.

[43] See Vasile Pătulea, *Objective and subjective structure of the plurality of offenses,* in "Romanian Journal of Law" no. 11/1979, p. 29. For the same purposes, see: Maria Zolyneak, *Some theoretical and practical aspects of relapse*, in "Romanian Journal of Law" no. 6/1983, p. 10; Mihai Petrovici, G. Laczko-David, *Some considerations about the structure of the offense provided for in Article 178 paragraph 3 of the Criminal Code*, in "Romanian Journal of Law" no. 6/1986, p. 41-44; Gheorghiță Mateuț, *Some considerations about the structure of the offense provided for in Article 178 paragraph 3 of the Criminal Code*, in "Romanian Journal of Law" no. 6/1986, p. 45-46; Aurel Oprea, *some "de lege ferenda" considerations on manslaughter*, in "The Law" no. 1/1992, p. 60-62; Viorel Siserman, *Manslaughter. Drunk driver,* in the "Law" no. 1/1996, p. 123-125; Eugen Mimi Gacea, *Forensic investigation of road traffic accident.* Ministry of Interior Publishing House, Bucharest, 2003, p. 43; Valerian Cioclei, *Criminal Law. Special Part. Offences against the person* Universul Juridic Publishing House, Bucharest, 2007, p. 86; Avram Filipaş, *Romanian criminal law. Special Part*, Universul Juridic Publishing House, Bucharest, 2008, p. 219.

[44] See George Antoniu, *Manslaughter* (Commentary), in the "Criminal Code commented and annotated", vol. I by Teodor Vasiliu, Doru Pavel, George Antoniu, Dumitru Lucinescu, Vasile Papadopol, Virgil Rămureanu, Scientific and Encyclopedic Publishing House, Bucharest, 1975, p. 111. For the same purposes, see: Octavian Loghin, *Criminal Law. General Part*, vol. I, Iaşi, 1975, p. 160; Costică Bulai, *Course on criminal law. Special Part,* Bucharest, 1975, p. 158; Oliviu Augustin Stoica, *Criminal Law, Special Part*, Didactic and Pedagogic Publishing House, Bucharest, 1976, p 83; Octavian Loghin, *Manslaughter* (Offences against life) in "Criminal Law". Special Part" by Octavian Loghin, Avram Filipaş, Didactic and Pedagogic Publishing House, Bucharest, 1983, p 46; Corneliu Turianu, Valeriu Stoica, *Some considerations about the structure of the offense provided for in Article 178 paragraph 3 of the Criminal Code*, in "Romanian Journal of Law" no. 6/1986, p. 50; Ion Dobrinescu, *Offences against human life*, Publishing House, Bucharest, 1987, p 148-149; Corneliu Turianu, *Road legislation commented and annotated*, Scientific and Encyclopedic Publishing House, Bucharest, 1988, p 311; Avram Filipaş, *The unity of the continued offense and the complex one* (Comment 26) in the "Criminal judicial practice. General Part", vol. I, (art. 1-51 Criminal Code) by G. Antoniu (coordinator and co-author), C. Bulai (coordinator and co-author) Rodica Mihaela Stănoiu, Avram Filipaş, Constantin Mitrache, Vasile Papadopol, Cristiana Filişanu, Academy Publishing House, Bucharest, 1988, p 207-208; Corneliu Turianu, *Discussions on the legal nature and structure of the offense specified in art. 178 par. (3) of the Criminal Code* in "The Law" no. 4-5/1991, p. 61-70; Ion Gheorghiu-Brădet, *Romanian criminal law. Special Part,* vol. I, Europa Nova Publishing House, Bucharest, 1994, p. 88; G. Paraschiv, *Manslaughter - complex offense?*, in the "Journal of Criminal Law" no. 4/1999, p. 59-60; Octavian Loghin, *Manslaughter* (Offences against life) in "Criminal Law". Special Part" edition revised by Octavian Loghin, Avram Filipaş, Şansa SRL Publishing & Media House, Bucharest, 1992, p. 47, Gheorghe Diaconescu, *Offenses under special laws and Non-Criminal laws*, All Publishing House, Bucharest, 1996, p. 199. The renowned criminal law specialist has proposed *de lege ferenda* the establishment, by law, of the existence of multiple offenses in such cases, and the said suggestion was appropriated both by the 2004 criminal legislator and the one in 2009; Alexandru Boroi, *Offences against life*, Național Publishing House, Bucharest , 1996, p 208; Vasile Dobrinoiu, *Manslaughter* (Offences against life, physical integrity and health) in "Criminal Law. Special Part" by Gheorghe Nistoreanu, Vasile Dobrinoiu, Ilie Pascu, Alexandru Boroi, Ioan Molnar, Valerică Lazăr, Europa Nova Publishing House, Bucharest, 1997, p 120; Gheorghe Diaconescu, *Criminal offenses under the Romanian Criminal Code*, Vol. I, Oscar Print Publishing House, Bucharest, 1997, p. 190; Constantin Butiuc, *Complex offense,* All Beck Publishing House, Bucharest, 1999, p. 155-156; Mioara-Ketty Guiu, *The subjective element and structure of criminal offense*, Juridică Publishing House, Bucharest, 2002, p 110. The author believes that offenses-barrier can never be absorbed into the subsequent, the resulted offenses Gheorghe Diaconescu *Criminal Law. Special Part.* Course, vol. Fundația România de Mâine Publishing House, Bucharest, 2003, p. 214-215; Gigel Potrivitu, Alexandru Sibinovici, *Considerations concerning the offense covered by Art. 184 of the Criminal Code and the one provided for in Art. 79 of the Government Emergency*

The 2009 new Criminal Code[46] has adjudicated upon this controversy correctly providing the doctrine's majority position with efficiency, having beneficial consequences on the correct application of the criminal law. As such, after the entry into force of the new Criminal Code (February 1, 2014), Judgment no. I/2007 of the High Court of Cassation and Justice shall be terminated (while remaining void) and hence shall cease its binding effect that the courts have enjoyed under art. 414^5 last par. of the Code of Criminal Procedure of 1969.

The legal content of *offenses against physical integrity or health* (art 193-198) was simplified; hitting or other violent deeds, personal injury and serious injury laid down in art. 180-182 of the previous criminal law being regulated in relation to the nature of the consequences of two texts, namely art. 193 (hitting or other violence) and art. 194 (personal injury).

Child maltreatment offenses (art. 197) and fighting (art. 198) were systematized in this chapter, although in the previous regulation they were part of the offenses against the family, namely other offenses against the social cohabitation relationships, both the indictment groups being subdivisions of Title IX - Offences affecting the social cohabitation relationships - of the Special Part of the Criminal Code of 1969.

Commission of certain *criminal offenses against a member of the family* (art. 199-200) represents a circumstantial element of aggravation for all intended offenses against life or against physical integrity or health; in these cases, the special maximum of the punishment prescribed by law for the basic offense shall be increased by a quarter. The crime of infanticide, provided for in art. 177 of the previous Criminal Code was taken over in this chapter, but having another legal content and under a different name, namely killing or injury of the newborn committed by the mother - art. 200.

Abortion and unborn child injury *(incriminatio ex novo)* are indicted under the *assaults on the unborn child* (art. 201-202), and the content of *criminal offenses on the obligation to assist those in distress* (art. 203-204) is changed as opposed to the previous regulation these being separated only into two texts: art. 203 (leaving without help a person in distress) and Art. 204 (aid hindering). Furthermore, the 2009 legislator abandoned the indictment of art. 314 (endangering a person unable to take care of itself) of the previous criminal law.

The *offenses against personal freedom* framework (art. 205-208) was enriched with a new indictment, i.e. harassment (art. 208); an indictments group which also includes unlawful deprivation of freedom (art. 205), threat (art. 206) and extortion (art. 207), deeds whose legal content was not significantly altered compared to that set by the previous criminal law.

To the *trafficking and exploitation of vulnerable persons* (art. 209-217) offenses group, alongside with traditional indictments such as slavery (art. 209), submission to forced or compulsory labor (art. 212) and procuring (art. 213), the 2009 legislator brought several criminal provisions with indictments and punishments such as human trafficking (art. 210) and child trafficking (art. 211) whilst abandoning a text on begging (art. 328 of the previous Criminal Code)[47], the legislator created three indictments out of it, related to begging: begging exploitation (art. 214), exploiting a minor in begging (art. 215) and making use of the services of an exploited person (art. 216).

Criminal offenses against sexual freedom and integrity matter (art. 218-223) is completely revised based on a new concept, in agreement with the solutions of other systems of comparative law on the relationships

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Ordinance no. 195/2002. Comparative view, in "The Law" no. 1/2004, p. 154; Ion Tomescu, Cristian Aninaru, D. Stănescu, T. Dobre, P. Stancu, C. Dogaru, *Criminal Law. Course Notes*, vol. I, Zappy's Printing House, Câmpina, 2006, p. 161; Valerică Lazăr, *Criminal Law. Special Part, University Publishing House,* Bucharest, 2006, p. 113; Marian Bratiş, *Aggravated forms of the manslaughter offense*, in the "Journal of Criminal Law" no. 4/2006, p. 100; Sergiu Bogdan, *Criminal Law. Special Part,* vol. I, SC Sfera Publishing House SRL 2nd edition revised and enlarged, Cluj-Napoca, 1997, p. 68; Ovidiu Predescu, Angela Hărăştăşanu, *Criminal Law. Special Part*, Second Edition revised, Omnia Uni S.A.S.T. Publishing House, Braşov, 2007, p. 70; Constantin Duvac, *Causation and illegal activity issues during the investigation of traffic accidents which resulted in the victim's death*, in the collective work "Forensic investigation of road traffic accidents, the contribution of the media in preventing thereof", published under the aegis of the Romanian Forensic Association, Bucharest, 2008, p. 366; Constantin Duvac, *Criminal offences apparent multiplicity*, *cit. supra,* p. 192; Gheorghe Diaconescu, *Manslaughter* in "Treatise on criminal law The Special Part (Treatise) by Gheorghe Diaconescu, Constantin Duvac, C. H. Beck Publishing House, Bucharest, 2009, p. 113; Constantin Duvac, *Manslaughter, complex offense, cit. supra*, p. 121; Constantin Duvac, *Criminal Law. Special Part,* vol. I, C. H. Beck Publishing House, Bucharest, 2010, p. 97-99.

[45] See the Supreme Court, Criminal Section, judgment no. 1041/1964, in "The new Justice" no. 2/1965, p. 173. For the same purposes, see: Iaşi regional Court, judgment no. 222/1965, in "The new Justice" no. 8/1965, p. 163; Court of Appeals Bucharest, IInd Criminal Section, judgment no. 909/2002, cited by Gheorghe Ivan, *Criminal Law. Special Part*, C. H. Beck Publishing House, Bucharest, 2009, p. 75.

[46] "When violation of legal provisions or preventive measures is itself an offense, the rules of multiple offenses shall apply" [Art. 192 par. (2) of the IInd Thesis]. To remove any doubt in this regard, the legislator removed the normative assumption concerned from the contents of aggravated manslaughter.

[47] Project Drafting Commission members had proposed that, by art. 389 (Prostitution), this indictment should be kept.

between the offenses listed in this category. For example, rape (art. 218) is configured starting from the idea of the act of penetration, so that under the contents of this offense falls the intercourse - in the meaning traditionally known by the Romanian criminal law, i.e. that of male sexual organ's conjunction with the female one - oral and anal intercourse, regardless of whether in these latter cases a heterosexual or homosexual act is carried out. Also, in view of the Commission, the legal content of rape also includes the acts of vaginal or anal penetration accomplished through other actual means.

In respect of sexual acts other than those that fall within the offense of rape committed under the influence of coercion or of the equivalent statuses thereof, a separate indictment is created, namely that of sexual assault (art. 219).

Within the *criminal offenses prejudicing home and private life* (art. 224-227), new indictments are introduced, such as professional office trespass (art. 225) and invasion of privacy (art. 226), together with domicile trespass (art. 224) and professional secrecy disclosure (art. 227), offenses which were also provided for in the previous criminal law.

Although the new Criminal Code no longer states the deeds directed against human dignity, *de lege ferenda*, the criminal *offenses against dignity* should be reintroduced in the final chapter of Title I of the Special Part: insult, slander and proof of truth, facts traditionally indicted by the Romanian criminal law, but also by legislation of other states with an advanced democracy (Germany, Italy, France, etc.).

2.2. Offences against property (art. 228-256) are divided into 5 chapters [Chapter I - Theft (art. 228-232), Chapter II - Robbery and piracy (art. 233-237), Chapter III - Offences against property by breaching of trust (art. 238-248), Chapter IV - Fraud committed through computer systems and electronic payment means (art. 249-252), Chapter V – Destruction and disturbance of property (art. 253-256)], compared to the actual situations the goods as economic entities may face, and to the character or nature of illegal actions whereby such situations can be modified. This systematization is not an absolute novelty for the Romanian criminal law, but a return to tradition: the Criminal Code of 1864 was systematizing property crimes and misdemeanors in 9 sections and the Criminal Code of 1937 stipulated the crimes and misdemeanors against property under Title XIV which included 4 chapters.

Chapter I - *Theft* - includes indictment rules relating to theft (art. 228), aggravated theft (art. 229), theft for the purpose of use (art. 230), punishment of theft upon prior complaint (art. 231) and punishment of attempt to these offenses (art. 232). A novelty is the stand alone indictment of theft for the purposes of use and punishment thereof with lower penalty; in this case, the special limits of punishment stipulated for theft and aggravated theft are going down by one third.

Robbery (art. 233) and *piracy* (art. 235) have essentially the same legal content as that provided in the previous criminal law, except that the 2009 legislator has distinctly incriminated armed robbery (art. 234) and robbery or piracy followed by the death of the victim (art. 236).

Offences against property by breaching of trust receive the largest amendments or completions. Thus, for breach of trust (art. 238) a new way of committing the offense was provided for, namely through the unlawful use of property entrusted with a specific purpose by the person who had received it.

Art. 239 has introduced an *incriminatio ex novo*, the breach of trust by defrauding creditors, which is provided for in a simple and an assimilated version.

Wording of art. 240 par. (1) of the new Criminal Code indicting the simple bankruptcy[48] has the same content as that of art. 143 par. (1) of Law no. 85/2006 on the insolvency proceedings[49], however a different systematization. If the special law provided first for the sanction and then for the description of the deed, the new Criminal Code proceeds reversely: at first it describes the deed and then states the sanction.

Provisions of art. 241, whereby fraudulent bankruptcy[50], was indicted, are essentially a reproduction of those laid down in art. 143 par. (2) of Law no. 85/2006, yet in a form somewhat altered. When drafting this text, the 2009 legislator, unlike the formula used in the preparation of Law no. 85/2006, passed another legislative technique describing first the precept of the rule (prohibited actions), then the sanction provided for.

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[48] For details, see: Constantin Duvac, *The simple bankruptcy in the new Criminal Code* in the "Journal of Criminal Law" no. 4/2011, p. 67-81, Idem, *Fraudulent bankruptcy in comparative law*, in the "Journal of Criminal Law" no. 3/2012, p. 133-141.

[49] Published in the "Official Gazette of Romania" Part I, no. 359 of April 21, 2006, as subsequently amended and supplemented. The stated purpose of this law is to establish a collective proceedings (collective proceedings means the proceedings where the acknowledged creditors participate together in tracking and recovery of their claims, in the manner prescribed by this law) to cover the liabilities of the insolvent debtor.

[50] For details, see Constantin Duvac, *The Fraudulent bankruptcy in the new Criminal Code* in the "Journal of Criminal Law" no. 1/2012, p. 42-70.

Another amendment to the legal content of fraudulent bankruptcy refers to adding the condition "for defrauding creditors" to all legal forms under which this offense can appear, whilst in the regulation in force the requirement referred to was provided for only by the last indictment hypothesis [art. 143 par. (2) letter c) of Law no. 85/2006).

Also the new Criminal Code, unlike the Law no. 85/2006, conditions the commencement of the fraudulent bankruptcy criminal proceedings on the injured person's prior complaint.

De lege ferenda, in addition to the wording's rephrase and the substitution of the phrase "for defrauding creditors" with the phrase "for defrauding the creditor", it would also be required to remove any ambiguity about the meaning of this phrase, and hence about the form of guilt one can commit the offense under consideration, about the immediate outcome and the consumption thereof.

If the offender has found the property or if the property has inadvertently come into his possession (art. 243), this offense is regulated similar to the manner existing in the Criminal Code of 1969. To the type version in par. (2) the phrase "by chance" was added, together with an alternative normative way of commission the criminal offense, consisting of non-delivery of property within 10 days of the offender's acknowledgment that the property does not belong to him.

Deception[51] (art. 244) is indicted in two versions, a simple one and an aggravate one. The wording no longer includes par. (3), (4) and (5) of art. 215 of the previous Criminal Code, thereby giving the appearance of fraudulent misrepresentations decriminalization, should the deception be performed through cheques, or it has very serious consequences, but these shall be, in relation to provisions of art. 244, actual ways of committing the simple or aggravated deception offense, as appropriate. *De lege ferenda*, we believe that one should be reintroduce as circumstantial element of aggravation the fact that, by committing the deception offense, serious consequences have occurred for the purposes stated in art. 183.

Art. 245 (insurance fraud[52]) indicts, under a single marginal name (*nomen juris*), two different deeds (one in connection to the provision of goods and other on persons insurance) as distinct criminal offenses, hence each having its own legal content, and both having no correspondent in the previous criminal law.

De lege ferenda, could be introduced as circumstantial element of aggravation the supposition that the purpose provided for in the indictment rule is achieved. One should reflect on whether the sentence prescribed by law for this offense should be linked to that of deception, as it is difficult to accept that deeds of threat and barrier deeds are to be punished more severely than those subsequent and of outcome, given the fact that they are related (they belong to the same subset of criminal offenses characterized by breach of confidence).

Misappropriation of public tenders[53] (art. 246) was not previously regulated in the Criminal Code of 1969, and this provision essentially reproduces the provisions of art. 260 par. (5) (type version[54] within the offense of deception) and is influenced by certain provisions of art. 329, both of the first new Criminal Code of 2004, adopted by Law no. 301/2004.

To avoid any confusion and inconsistent application of the text by the criminal judicial bodies in relation to Government Emergency Ordinance no. 34/2006 regarding the award of public procurement contracts, public works concession contracts and services concession contracts[55] and Government Decision no. 925/2006[56] for the approval of the rules for implementing the provisions concerning the award of public procurement contracts under Government Emergency Ordinance no. 34/2006, a paragraph should be added in the text which would stipulate that this rule also applies to public procurement procedures (open procedure, restricted procedure, competitive dialogue, negotiation and call for tenders), thus ensuring criminal protection of free competition also for public procurement dedicated to economic operators as well as ensuring efficient use of public funds.

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[51] For details, see Constantin Duvac, *Deception in the new Criminal Code,* in "The Law" no. 1/2012, p. 104-134; "Justice, rule of law and legal culture" collective work, Universul Juridic Publishing House, Bucharest, 2011, p. 800-814; Idem, *Similarities and differences between deception and other indictments of the new Criminal Code,* in "The Law". 2/2012, p. 74-103.

[52] For details, see Constantin Duvac, *Insurance fraud in the new Criminal Code,* in: "The Law" no. 6/2012, p. 72-91; "Efficiency of Legal Norms" collective work, Hamangiu Publishing House, Bucharest, 2012, p. 102-119.

[53] For details, see Constantin Duvac, *Misappropriation of public tenders in the new Criminal Code,* in "The Law" no. 8/2012, p. 84-105.

[54] See George Antoniu, *The New Criminal Code. The previous Criminal Code. Comparative study, cit. supra,* p. 105. On that occasion, Professor Antoniu suggested this text to be written as a separate paragraph of article 329 because the fraudulent means the perpetrator uses and to which art. 260 par. (5) was referring to were aimed at preventing or disturbing competition in public tenders; only in subsidiary the legal subject in this case would be economic relations.

[55] Published in the "Official Gazette of Romania" Part I, no. 418 of May 15, 2006, as subsequently amended and supplemented.

[56] Published in the "Official Gazette of Romania" Part I, no. 625 of July 20, 2006, as subsequently amended and supplemented.

The exploitation of vulnerable persons' property[57] (art. 247) was not regulated in the previous Criminal Code (*incriminatio ex novo*). However, the solution is not entirely new for the Romanian criminal law as art. 542 of the Criminal Code of 1936 has provided for a similar offense, i.e. the offense of exploiting human weaknesses or vices, which was part of the property damage criminal offenses.

Computer-related fraud and electronic payment fraud: computer fraud (art. 249), conducting financial operations fraudulently (art. 250), accepting fraudulent transactions (art. 251) were not mentioned in the Criminal Code of 1969, but are taken from Law no. 161/2003 regarding certain measures to ensure transparency in exercising public offices, public positions and in the business environment, the prevention and sanctioning of corruption[58] and from Law no. 365/2002 on electronic commerce[59]. Attempt to offenses laid down in this chapter is punishable (art. 252).

Destruction and disturbance of property (art. 253-256) have, essentially, the same content as that of the corresponding indictments in the previous regulation, just like aggravated destruction (art. (254) or negligent destruction (art. 255), the contents thereof suffering insignificant changes, some reformulation being in line with the doctrine and jurisprudence requests. Concealment (art. 221 of the Criminal Code of 1969) was moved to the group of criminal offenses against justice (art. 270).

2.3. Offences concerning the State authority and border (art. 257-265) were divided into two chapters: one on the deeds against authority (art. 257-261) and another dedicated to the criminal offenses against the State border (art. 262-265).

In terms of *offenses against the authority,* the indictments of the previous Criminal Code were broadly kept, without significant changes to their content and indictment of the offense against insignia was abandoned. This group includes the following offenses: outrage (art. 257), formal capacities usurping (art. 258), theft or destruction of documents (art. 259), breaking the seal (art. 260) and sequestration avoidance (art. 261), the last two being taken over unchanged from the indictments of the previous criminal law.

Within the group of *State border crime*, and not being mentioned in the previous Criminal Code, the following criminal offenses were introduced: illegally crossing the state border (art. 262), smuggling (art. 263), facilitating illegal stay in Romania (art 264) and avoiding the measures to cast out from the country (art. 265) by taking over those amended offenses from the criminal law with criminal provisions, namely from the Government Emergency Ordinance no. 105/2001 on the Romanian State border[60], approved as amended by Law no. 242/2002 and Government Emergency Ordinance no. 194/2002 regarding the regime of foreigners in Romania, republished[61], approved as amended and supplemented by Law no. 357/2003.

2.4. In relation to **criminal offenses against justice** (art. 266-288) significant, justified amendments and which are required by the new realities of a democratic society in which justice is raised to the rank of supreme value [art. 1 par. (3) of the Romanian Constitution] are introduced; these indictments aim, according to the commission, to ensure legality, independence, impartiality and firmness in the achievement of justice, by criminally indicting deeds likely to seriously affect, to ignore or undermine judicial authority.

The new regulation resulted in an increase of indictments related to deeds against justice, namely from 16 texts (art. 259-272 of the Criminal Code of 1969) to 23 texts. This increase is due primarily to the introduction of new indictments [i.e., obstruction of justice[62] (art. 271), revenge for helping justice (art. 274), pressure on the judiciary (art. 276), compromising the interests of justice (Art. 277), hearing solemnity violation (art. 278), unfair assistance and representation (art. 284)] compared to the regulation in force, and, secondly, due to the takeover, with amendments, of some indictments from the special laws having criminal provisions [failure to comply with judgments (art. 287)]. The offense of concealment was also introduced in this title; in the Criminal Code of 1969 it was among the offenses against property.

In many cases, due to changes in the content of terms or phrases used by the legislator in drafting such indictments (e.g., notions of public servant, family member, etc.), an implicit change has also occurred regarding the legal content of these criminal offenses whose incidence, as appropriate, was extended [e.g.,

[57] For details, see Constantin Duvac, *The exploitation of vulnerable persons' property in the new Criminal Code* in the "Journal of Criminal Law" no. 3/2012, p. 29-43.

[58] Published in the "Official Gazette of Romania" Part I, no. 279 of April 21, 2003, as subsequently amended and supplemented.

[59] Published in the "Official Gazette of Romania" Part I, no. 959 of November 29, 2006.

[60] Published in the "Official Gazette of Romania" Part I, no. 352 of June 30, 2001, as subsequently amended and supplemented.

[61] Republished in the "Official Gazette of Romania" Part I, no. 421 of June 5, 2008, as subsequently amended and supplemented.

[62] For details, see Constantin Duvac, *Obstruction of justice in the new Criminal Code* in the "Journal of Criminal Law" no. 4/2011, p. 20-22.

failure to notify (art. 267) or narrowed (for example, failure to denunciate (art. 266), favoring the perpetrator (art. 269) or concealment (art. 270), when committed by a family member].

2.5. The **corruption and office offences** framework (art. 289-309) was completely revised and systematized not only by taking over into the text of the Code the indictments contained in Law no. 78/2000 on preventing, discovering and sanctioning corruption[63] or in other special laws with criminal provisions, but also by reformulating some texts or merging others.

Corruption offenses group (art. 289-294) established bribery (art. 289 and art. 290), influence peddling (art. 291) and buying influence (art. 292), as text on receiving undue benefits provided for in art. 256 of the Criminal Code of 1969 was not taken over, all texts being amended. For example, unlike the version of art. 280 of the Project, the 2009 legislator has significantly amended the legal content of this indictment in terms of the natural persons who may commit the offense directly (public servant instead of official[64]), the objective side the content of which has abandoned the normative way for the promise of undue benefits non-refoulement, as well as the aggravated version characterized by the commission of the offense by certain public servants (civil servant occupying a public dignity, acting in management or dealing with control, or holding an office involving the exercise of state authority), and the form of guilt bribery can be perpetrated. Thus, where, traditionally, bribery could not have been committed without direct intention, the intention being aggravated by the offender's purpose by carrying out the indicted action, this act will also be able to be committed with indirect intent under the new regulation. In the new regulation, action indicted can be achieved directly by the active subject , both for itself and for others. Also, the one who, whilst exercising his duties will not reject the promise of money or other benefits to which it is not entitled to, shall not be held criminally liable, but possibly disciplinary, as such failure to act could be interpreted as an improper manifestation at work or in the society.

It is worth mentioning that some bribery aggravating circumstances, as they had been provided for in the project, were introduced by Law no. 187/2012 into Law no. 78/2000. Thus, the deed of bribery committed by a person who: holds a public office, is a judge or prosecutor, is the criminal investigation body or is responsible for establishing or enforcing contraventions, or is one of the persons mentioned in art. 293, shall be sanctioned with the penalty stipulated in art. 289, whose limits are increased by one third (art. 7 of Law no. 78/2000).

Bribery committed by a person exercising a public profession - assimilated civil servant - is criminalized in a separate paragraph, but only if such deed is committed in connection with the failure to or delay in performance of an act concerning its legal duties or in connection with performing an act contrary to these duties. This provision was meant to solve the controversy whether the notary public, the bailiff or other people who hold a public office, for which special empowerment by the government is required, may or may not be bribery offenders. In these cases, the answer can only be positive as, in fact, we have stated on other occasions[65].

Under the new regulation, the deeds referred to in Art. 289 par. (1) will not be covered by the criminal law when committed by any of the persons mentioned in art. 175 par. (2) in connection with the performance or speeding up of the performance of an act falling within their office duties.

In the chapter on office offenses (art. 295-309) were placed: malversation (art. 295), abusive behavior (art. 296), abuse of office[66] (art. 297), negligence (art. 298), misuse of office for sex (art. 299), usurpation of office (art. 300), the conflict of interests (art. 300), the conflict of interests (art. 302), disclosure of state secrets (art. 303), disclosure of confidential or nonpublic information (art. 304), negligence in storing information (art. 305), illegal obtaining of funds (art. 306) and extortion (art. 307).

One should note that in some cases the new regulation simplifies the statutory provisions implementation whereas, for example, the abuse of office offense against the interests of individuals, against the public interest and limiting rights, that are laid down as independent offenses in art. 246-248 of the Criminal Code of 1969 were merged into a single text, namely art. 297, the indictment being also subject to some improvements. Unlike the previous legislation, the single immediate consequence in the case of the indictment rule laid down in art. 297 par. (1) is the causing of damage or prejudice to the rights or legitimate

[63] Published in the "Official Gazette of Romania" Part I, no. 219 of May 18, 2000, as subsequently amended and supplemented.

[64] The Commission had preserved the concept of official (art. 177 of the Project), along with that of public servant (art. 176 of the Project).

[65] See Constantin Duvac, *The concept of public official in the light of the new Criminal Code,* in "The Law" no. 1/2011, p. 118-123.

[66] For details, see: Constantin Duvac, *Abuse of office by limiting the rights in the new Criminal Code*, in the collective work "Exercising the right to non-discrimination and equal opportunities in the contemporary society", Pro Universitaria Publishing House, Bucharest, 2011, p. 65-79; Idem, *The abuse of office in the new Criminal Code*, in "The Law" no. 10/2012, p. 62-103.

interests of an individual or a legal entity, the significant disturbance to the smooth functioning of a body or a state institution or of another public unit no longer being provided for.

Also, the new draft of the indictment text no longer requires that failure to fulfill or improperly fulfillment of the act shall be committed knowingly; the content of the indictment referred to in art. 297 is thus subjectively correlated with the provisions of the Ist sentence of art. 16 par. (6), that establishes the rule according to which the offense consisting of failure to act is an offense if intentionally committed. In these circumstances, preserving the expression "knowingly" within the legal content of the abuse of office offense, along with the rules stipulated in the Ist sentence of art. 16 par. (6) would have been superfluous.

Serious abuse of office provided for in art. 248^1 of the Criminal Code of 1969 was repealed, but not decriminalized because, should the actual abusive deed generate very serious consequences art. 309 is also incident; in such case, the special limits of the penalty provided for in art. (297) are increased by half.

2.6. Forgery offences (art. 310-328), unlike the previous regulation, were divided into three chapters [Chapter I - Counterfeiting of currencies, stamps or other securities (art. 310-316), Chapter II - Forging authentication or marking tools (art. 317-319) and Chapter III - Documentary evidence forgeries (art. 320-328)], and were enriched with new indictments [Falsification of technical records (art. 324), Computer forgery (art. 325)]. Indictments taken over from the previous Criminal Code were reconsidered, especially those concerning forgery of currencies, stamps or other values or documentary evidence forgery.

In Chapter I - *Counterfeiting of money, stamps or other securities,* falsification of currencies or other securities, referred to in art. 282 of the previous criminal law, was split into two separate texts: one relating to counterfeiting of currencies (art. 310), and another regarding the falsification of debt securities or payment instruments (art. 311), solution reached due to the different social danger of the two deeds also reflected in the related sentences set out.

For the offense of release counterfeit securities (art. 313) there was an explicit provision that the counterfeiting offense perpetrator can also be an active subject in terms of this deed and they also indicted recirculation of counterfeit securities by a person who has received them whilst initially being unaware of that; the deed is however punished more gentle than the first entry into service of those securities (such indictment has also existed in art. 389 of the Criminal Code of 1937).

For reasons of criminal policy, the possession of instruments for counterfeiting securities offense (art. 314) has received a non-punishment reason to be applied when the offender hands over these instruments to the authorities or tells authorities about their existence, before passing to committing the crime of forgery.

The contents of currencies counterfeiting (art. 310) also provides for a new way relating to counterfeiting of currencies already issued, before the effective circulation thereof.

Alike, a new indictment was provided for, i.e. fraudulent issuing of currency (art. 315), to be applicable where manufacturing genuine currency was carried out by using facilities or materials legally intended for issuing currency, but without the consent of authorities or by breach of the conditions set by the latter.

Text under the group of deeds concerning *forging authentication or marking the* legal *tools* have been reconfigured. Forgery of official tools (art. 317) concerns the tools used by both the persons mentioned in art. 176 (Public) and the assimilated public servants, referred to in art. 175 par. (2), and by any other person (natural or legal person, governed by public or private law). Art. 318 indicts in particular the use of false instruments referred to in art. 317 and it has its own punishment limits. Provisions of this Chapter shall also apply where the offense relates to the authentication of markup tools used by the authorities from a foreign state (art. 319).

Forgery of documentary evidence includes a number of amendments as compared to the previous criminal law. Forging technical records is a new entry indictment (art. 324). Due to the fact that pre-legislative reality found that more and more documents that certify a certain circumstance and which may produce legal effects are automatically released with no direct intervention of a public servant, the Commission considered that criminal protection of these certifications accuracy is needed, given that their counterfeit cannot be classified based on the existing texts.

Identity document forgery (art. 327) was amended so that the dispute over the need for identity documents for committing this offense was settled, starting from the assumption that the public servant to whom the perpetrator appears under false identity should not believe the latter's mere allegations, as the public servant has the means to identify that person. A differentiation in terms of criminal treatment between the assumption of recourse to a fictive identity and that of fraudulent use of identity belonging to another person was also introduced; in the latter case there is the likelihood for occurrence of some legal consequences towards that person.

2.7. Offences against public safety (art. 329-366), divided into 6 chapters [Offences against railway traffic safety (art. 329-333), Offences against public road traffic safety (art. 334-341), breach of the arms,

munitions, nuclear and explosives control regime (art. 342-347) offenses relating to the regime set for other activities regulated by law (art. 348-351); Offences against public health (art. 352-359), Offences against the security and integrity of information systems and data (art. 360-366)] took over into separate subdivisions the indictments set out in Government Emergency Ordinance no. 195/2002 on public roads traffic, republished[67], approved as amended and supplemented by Law no. 49/2006 and in Law no. 161/2003, and the texts preserved from the previous criminal law were systematized again and largely modified.

Offenses against railway traffic safety were covered whilst preserving most of the marginal names and contents existing in the previous Criminal Code which, however, have undergone some changes. The aggravating circumstance for occurrence of railway disasters, provided for in art. 277 par. (2) of the Criminal Code of 1969, was removed so that, if by any of the deeds referred to in this title, consequences confined to this notion will occur (e.g., death or injury to persons) multiple offenses rules will be applicable.

In the Commission's view, the second significant change refers to the transformation of the immediate outcome of the offenses under this chapter, from a result "of danger" in a consequence "of result", by replacing "could have endangered" or "could have exposed" with "endanger" or "danger appears".

Offenses against public road traffic safety is a takeover, with amendments, of the criminal rules set out in the Government Emergency Ordinance no. 195/2002, republished, and which have received their own *nomen iuris*.

Failure to comply with the arms, munitions, nuclear and explosive materials control regime is a chapter composed of deeds that are perpetrated in violation of the legal status of these scopes.

The legal content of failure to comply with the weapons and ammunition control regime (art. 342) has been reformulated and linked to the regime of weapons and ammunition covered by Law no. 295/2004 regarding the regime of weapons and ammunition, republished[68], law that provides for a different classification of weapons and ammunition (prohibited weapons and ammunition, lethal weapons and ammunition, non lethal weapons and ammunition). Also, the illegal use of weapons (art. 343) and counterfeit or deletion or alteration of the markings on lethal weapons (art. 344) were introduced; they were not found in the previous Criminal Code. The other indictments under this chapter have been slightly amended and the punishment limits were established according to the principles of criminal policy which led to the development of the new criminal legislation.

The group of *offenses relating to the regime established for other activities regulated by law* includes those deeds that are committed in violation of other legal regimes than those covered by the indictments of chapters 1-3 under this title. The only indictment rule taken over from the previous Criminal Code is the illegal exercise of a profession or activity (art. 348). Failure to take legal security and health actions (art. 349) and failure to comply with the legal occupational health and safety measures (art. 350) are amended provisions taken from art. 37 and art. 38, both of Law no. 319/2006 of occupational health and safety[69].

Rightly, usury[70] (art. 351) is re-indicted under the new Criminal Code (this deed has also been criminalized by art. 295 letter d) of the previous Criminal Code, but arguably, as a normative way for the speculation offense, by Law no. 12/1990 on the protection of the population against illicit commercial activities, republished[71], the text was repealed, usury being decriminalized; usury had been re-indicted also by art. 450 of the first new Criminal Code of 2004), the "practice" of unauthorized persons giving money with interest, over the legal limit and repeatedly (usurers), being known.

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[67] Republished in the "Official Gazette of Romania" Part I, no. 670 of August 3, 2006, as subsequently amended and supplemented.

[68] Republished in the "Official Gazette of Romania" Part I, no. 814 of November 17, 2011, subsequently amended.

[69] Published in the "Official Gazette of Romania" Part I, no. 646 of July 26, 2006, as subsequently amended and supplemented.

[70] For a thorough analysis of this offense, see: Constantin Duvac, *Speculation in products that may not be subject to private trade, and usury (Offences against economic life),* in "Criminal Law. Special Part", academic course, vol. II, by Gheorghe Diaconescu, Constantin Duvac, Fundația România de Mâine Publishing House, Bucharest, 2006, p. 461-468; Nicolae Grofu, *Cash Loans. Controversies* in the "Journal of Criminal Law" no. 4/2004, p. 133-135; Nicolae Grofu, *Cash Loans given by a natural person. Criminal offense or civil litigation?*, Communication presented at the International Symposium of Criminology, Chişinău, 24-25 September 2004, and published in the book "Forensics at the beginning of the third millennium: findings, trends and perspectives", Chişinău, 2005; Nicolae Grofu, *Some considerations on re-indictment of the usury offense* in "The Law". 5/2005, p. 147-153; Alexandru Boroi, *Criminal Law. Special Part. According to the new Criminal Code*, C. H. Beck Publishing House, Bucharest, 2011, p. 539-540; Tiberiu Medeanu, *Usury (Offenses relating to the regime set for other activities regulated by law*) in "Criminal law handbook. Special Part", vol. II, by Petre Dungan, Tiberiu Medeanu, Viorel Paşca, Universul Juridic Publishing House, Bucharest, 2011, p. 411-413; Vasile Dobrinoiu, Norel Neagu, *Criminal Law. Special Part (Theory and judicial practice)*, Universul Juridic Publishing House, Bucharest, 2011, p. 689-690; Mihai Adrian Hotca, *Usury* (Comment) in "The new Criminal Code reviewed. Special Part", vol. II by Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chiş, Mirela Gorunescu, Costică Păun, Maxim Dobrinoiu, Norel Neagu, Mircea Constantin Sinescu, Universul Juridic Publishing House, Bucharest, 2012, p. 856-857.

[71] Republished in the "Official Gazette of Romania" Part I, no. 291 of May 5, 2009.

Offenses against public health, which previously belonged to Title IX "Offenses against social cohabitation relationships", were brought into the category of criminal offenses against public safety, keeping most of their content but with some amendments.

For example, venereal contamination and transmission of the acquired immunodeficiency syndrome, as provided for in art. 309 of the previous Criminal Code was indicted under two texts, namely the venereal contamination (art. 353), distinct from the transmission of the acquired immunodeficiency syndrome (art. 354), solution claimed by the criminal literature to distinguish, in terms of social danger, between transmission of a venereal disease by any means by persons who know they suffer from this disease, that of transmission of the acquired immunodeficiency syndrome - AIDS - under the same circumstances, having a new aggravated circumstance due to the commission of the deed by a person other than the one who suffers from this disease, and this person is criminally punishable also when committing by negligence the deed concerned. The deed provided for in art. 354 shall be even more serious if the victim's death has occurred.

Also, forgery or substitution of foodstuffs or other products (art. 357) have not taken over from art. 313 of the previous criminal law those aggravating circumstances caused by a person's illness, bodily injury or even death, in all these cases are to apply the multiple offenses rules.

Chapter VI - *Offences against the safety and integrity of information systems and data* includes several indictments not mentioned in the previous Criminal Code; they were taken over from title III - Preventing and fighting cybercrime of Law 161/2003 with some amendments on the precept or sanction (in these cases, punishment limits were reduced, being set in accordance with the criminal policy principles which have led to the preparation of the new Criminal Code in this regard).

For example, illegal access to a computer system[72] (art. 360) is a replica of art. 42 of Law no. 161/2003, only the aggravated version in par. (3) of this text being restyled. Within this aggravated version, the term "breach of security measures" was replaced with "concerning a computer system to which, by means of procedures, devices or specialized programs, access is restricted or prohibited for certain categories of users"; these are equivalent concepts, as shown in art. 35 par. (1) letter h) of Law no. 161/2003.

2.8. Offences affecting relations of social cohabitation (art. 367-384) are grouped into three subdivisions relating to the offenses against public order and safety (art. 367-375), offenses against the family (art. 376-380) and offenses against religious freedom and respect due to the dead (art. 381-384). The contents of this title has grouped into several chapters indictments existing in the previous Criminal Code, indictments which were spread out in several special laws, and new indictments corresponding to the requirements outlined in the pre-legislative period.

In relation to *criminal offenses against public order and safety,* one of the most important amendments concern the offense provided for in art. 367. Thus the new Criminal Code took over from Law no. 39/2003 on preventing and fighting organized crime[73] the offense of setting up an organized criminal group[74] brought in the group of offenses against public safety and order; on this occasion it underwent some amendments. By this solution, the new criminal law editors have abandoned the duplication existing on the occasion of its adoption among the texts indicting such deeds (organized criminal group, association to commit offenses, conspiracy, terrorist group) in favor of establishing a framework indictment - setting up an organized criminal group - keeping only the terrorist association as a separate indictment, provided for in art. 35 of Law no. 535/2004 on preventing and fighting terrorism[75], due to its specificity. This text will be applicable under the rule of specialty, as the main solution for multiple criminal rules, removing the scope of art. 367, but only in the cases where the purpose-crime is one of those referred to in art. 32 (acts of terrorism) of Law no. 535/2004 because criminal law is strictly construed. In all other cases (the purpose-crime shall be another deed of those stipulated in Law no. 535/2004, art. 367 of General Law shall apply).

A new indictment was also introduced in this chapter, namely attempt to cause an offense (art. 370), deemed necessary by the Commission members under the terms of giving up the regulation on incitement, within the general part, which is not followed by execution, as provided for in art. 29 of the Criminal Code of 1969). As such, attempt to determine a person, by coercion or corruption, to commit an offense for which the law prescribes imprisonment for life or imprisonment exceeding 10 years is punishable by imprisonment of one to 5 years or a fine. Another *incriminatio ex novo* is the hindering of conducting a public meeting (art. 373).

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[72] For details, see Constantin Duvac, *Illegal access to a computer system under the new Criminal Code* in "Romanian Journal of intellectual property law" no. 2/2011, p. 88-109.

[73] Published in the "Official Gazette of Romania" Part I, no. 50 of January 29, 2003, as subsequently amended.

[74] For details, see Constantin Duvac, *Setting up an organized criminal group in the new Criminal Code,* in "The Law" no. 1/2013, p. _____.

[75] Published in the "Official Gazette of Romania" Part I, no. 1,161 of December 8, 2004, as subsequently amended and supplemented.

In this category of offenses were also introduced the unlawful port weapon or use of dangerous objects (art. 372)or the hindering of conducting a public meeting (art. 373) or child pornography (art. 374), by taking over, with amendments, incriminating texts listed in: Law no. 60/1991 regarding the organization of public gatherings, republished[76]; Law no. 61/1991 sanctioning violations of the social cohabitation norms and of the public order and safety, republished[77]; Law no. 678/2001 on preventing and fighting human trafficking[78]; Law no. 161/2003 and in Law no. 196/2003 on preventing and fighting pornography, republished[79].

Last but not least, the binomial indictment provided for in the art. 321 of the previous Criminal Code (outrage against morality and public safety disturbance) was systematized, with improvements, in two different texts: art. 371 (public order and safety disturbance) and art. 375 (outrage against morality), indictment intended to cover situations of public exposure of images showing explicit sexual activity, but also those of committing public acts of exhibitionism or explicit sexual acts, regardless of their nature (intercourse relations, oral or anal sexual acts, acts of zoophilia and so on).

Within the *offenses against the family*, in addition to indictments existing in the previous criminal law, the incest (art. 377) and a new indictment - hindering access to compulsory education (art. 380) were stipulated. Child maltreatment offenses provided for in art. 306 of the previous Criminal Code was preserved, but it was moved to the group of offenses against physical integrity or health of Title II - Offenses against the person, being provided for in art. 197.

The last chapter of Title VIII includes *offenses against religious freedom and respect due to the dead*. Compared to the previous regulation, the texts have been supplemented with new hypotheses and new deeds were incriminated, that is those whose commission has been reported in the pre-legislative period. For example, for the crime of hindering religious freedom[80] (art. 381), it was stipulated, as a distinct hypothesis, ordering a person by force or threat to perform an act prohibited by the cult it belongs to (for example, order a person to eat pork, if it is forbidden by its religion). On the other hand, the penalties for this crime, for all its indictment versions, have been reconsidered and strengthened.

Desecration of places of worship and religious objects was incriminated separately in art. 382, and art. 384 provides for illegal removal of tissues or organs, a similar indictment existing in art. 155 of Law no. 95/2006 on the health reform[81].

2.9. A novelty of the Criminal Code, Title IX was dedicated to **electoral offenses**, deeds currently found in several special laws (Law no. 3/2000 regarding the organization and holding of referendum[82]; Law no. 67/2004 on local government election, republished[83]; Law no. 35/2008 for the election to the Chamber of Deputies and the Senate and for the amendment and completion of Law no. 67/2004 for the election of local public administration authorities, of Law on the local public administration no. 215/2001 and of Law no. 393/2004 on the Statute of local elected[84] and Law no. 370/2004 for the election of the President of Romania, republished[85])

The Commission deemed preferable to regroup electoral offenses in a separate title of the Criminal Code to provide these texts with greater stability, but also to eliminate duplication existing in the above cited special laws. The texts in this title also provide for more systematic indictments, having regard to their legal subject. At the same time, some of the indictments were restructured, for an accurate legal individualization. Thus, unlike the previous regulation, for the offense of breach of confidentiality to vote (art. 389) two versions (standard and aggravated) were created, having different sanctions; the deed committed by a member of the polling place is considered an unequivocal aggravating circumstance, unlike where the same act is committed by any other person who meets the general conditions to be held criminally liable.

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[76] Republished in the "Official Gazette of Romania" Part I, no. 888 of September 29, 2004.

[77] Republished in the "Official Gazette of Romania" Part I, no. 77 of January 31, 2011.

[78] Published in the "Official Gazette of Romania" Part I, no. 783 of December 11, 2001, as subsequently amended and supplemented.

[79] Republished in the "Official Gazette of Romania" Part I, no. 87 of February 4, 2008, as subsequently amended.

[80] For details, see Constantin Duvac, *Preventing the Exercise of Religious Freedom According to the New Criminal Code*, in "AGORA International Journal of Juridical Sciences" no. 2/2011, p. 327-337

[81] Published in the "Official Gazette of Romania" Part I, no. 372 of April 28, 2006, as subsequently amended and supplemented.

[82] Published in the "Official Gazette of Romania" Part I, no. 84 of July 24, 2000, as subsequently amended and supplemented.

[83] Republished in the "Official Gazette of Romania" Part I, no. 333 of May 17, 2007, as subsequently amended and supplemented.

[84] Published in the "Official Gazette of Romania" Part I, no. 196 of March 13, 2008, as subsequently amended and supplemented.

[85] Republished in the "Official Gazette of Romania" Part I, no. 650 of September 12, 2011, as subsequently amended.

Also attempted offense of corrupting the voters (art. 386) is no longer indicted [art. 102 par. (3) of Law no. 373/2004 for the election to the Chamber of Deputies and the Senate[86] stipulated punishment for this attempted offense].

2.10. For **offences against national security** (art. 394-412), the indictments of art. 155-173 of the Criminal Code of 1969 were basically maintained, however being made some terminological changes [the term "national safety" was dropped in favor of "national security", so that to be in line with the wording used in various constitutional texts - art. 31 par. (3) and art. 119], and also by redefining the content of certain offenses [for example, the offense of action against constitutional order (art. 397) or the assault threatening national security (art. 401)].

Wording of art. 397 brings together both the crime of subversion of state power, as well as that of actions against constitutional order laid down in art. 162 and respectively, art. 166^1, both of the previous Criminal Code.

Another novelty concerns the introduction of the offense of high treason (art. 398), an indictment requested by the legal literature[87], in accordance with the provision of art. 96 of the republished Romanian Constitution, and the systematization of the offense of propaganda for war (art. 405) within this title, whilst giving up it preservation among the crimes against peace and humanity of the previous Criminal Code, as the latter have been substantially altered by agreeing with the Statute of the International Criminal Court (ICC) ratified by Romania through Law no. 111/2002[88], as this provision does not exist in the contents of the said Statute.

Setting up illegal intelligence structures (art. 409), laid down in a similar manner in art. 19 of Law no. 51/1991 on Romania's national security[89] was encoded to provide the regulations in this matter with a unified framework, taking into account the obvious connection between this indictment and certain offenses covered under Title X of the Special Part.

2.11. Offences against the fighting capacity of the armed forces (art. 413-437) laid down in Title XI were divided into two chapters, one comprising the offenses that can be committed only by the military (art. 413-431) without distinguishing whether they are committed against the order and military discipline, on the battlefield or are specific to aviation and navy, and another providing for the offenses which may be committed by military or civilians (art. 432-437).

For determining the indictment rules content under this title, were considered the provisions of art. 55 and art. 73 par. (3) letter f), both of the republished Romanian Constitution and the provisions of Law no. 395/2005 regarding the suspension of the compulsory military service during peacetime and the transition to the voluntary military service[90].

In principle, the marginal designations and the contents of indictment rules concerning the deeds against Romania's defense capability were kept as were laid down in art. 331-355 of the previous Criminal Code, but some changes have also been made. Thus, in every indictment text, the phrase "in time of war" was replaced with "in time of war, during the state of siege or state of emergency", and the indication "against the adversary" was replaced with "against the enemy".

Chapter I - *Crimes committed by military* - has several new indictments: executive commander's coercion (art. 418) and abuse of authority (art. 419). To note that leaving the position or the command (art. 416) was indicted as a version of the offense of instruction violation under art. 333 par. (2) of the Criminal Code of 1969.

Chapter II - *Crimes committed by military or civilian* - provides for a single new indictment in art. 433 (aggression against the sentry), the other texts being reproduced from the previous criminal law, with minor changes.

2.12. Criminal offenses of genocide, crimes against humanity, and war crimes (art. 438-445), laid down in Title XII were revised to align the Romanian criminal law to the standards of the ICC Statute and other international documents ratified by Romania in this matter in order to facilitate the exercise of its powers, and were systematized in two chapters: *criminal offenses of genocide and against humanity* (art. 438-439) and *war crimes* (art. 440-445).

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[86] This law was repealed pursuant to art. 76 of Law no. 35/2008.

[87] See Constantin Duvac, *Some critical comments on the draft of a second new Criminal Code*, *cit. supra*, p. 151.

[88] Published in the "Official Gazette of Romania" Part I, no. 211 of 28 March 2002.

[89] Published in the "Official Gazette of Romania" Part I, no. 163 of August 7, 1991, as subsequently amended and supplemented.

[90] Published in the "Official Gazette of Romania" Part I, no. 1,155 of December 20, 2005, as subsequently amended.

As its name suggests, Chapter I gathers the genocide (art. 438), reproduced from the previous regulation without any substantive amendments, and the crimes against humanity (art. 439), text reproducing, in an adapted form, art. 7 of the ICC Statute.

Chapter II - *Crimes of War* - stipulates deeds such as: war crimes against persons (art. 440), war crimes against property and other rights (art. 441), war crimes against humanitarian operations and insignia (art. 442), use of prohibited methods in combat operations (art. 443), use of prohibited means in combat operations (art. 444). These indictments are found in a similar writing under the name of "war crimes", under art. 8 of the ICC Statute; however the text was formulated differently by the Commission members. Inspired by the German model, the chosen systematization method takes into account the current trend of the international criminal courts to equate war crimes committed in a conflict, whether or not they have an international nature. However, differentiation by the nature of the armed conflict is made where it is necessary, in the sense that there are some features of one or the other category of those disputes specified above.

Attempt to offenses laid down in this chapter is punishable under art. 445 (attempt sanctioning).

The criminal handling provided for the indictments under this title is fully compatible with that established by art. 77 of the ICC Statute.

2.13. The last title of the Special Part - **Final provisions** - has a single article, 446 (entry into force), which states under what conditions and when the new Criminal Code enters into force, and the repeal of Law No. 301/2004.

The legislative act referred to in this text is Law no. 187/2012 which includes the provisions on the implementation of Law no. 286/2009, as subsequently amended and completed, its main object being the harmonization of the existing criminal law with the provisions of the new Criminal Code, and setting the rules for resolving the conflict of laws resulting from the entry into force thereof.

III. *Conclusions.* This introductory study is an attempt to point out the views that formed the basis of the new criminal justice system in Romania, the principles used in drafting the criminal rules of the new Criminal Code, the profile and the specific content of the key Romanian criminal law institutions.

The new Romanian Criminal Code is a unitary legislative work, superior to the previous one and reflects the development of the criminal literature and criminal legal practice, in line with the current requirements of the Romanian society.

Work of great historical significance, the new Romanian Criminal Code ensures the fulfillment of requirements arising from the criminal law fundamental principles established by the Constitution of Romania, republished, and from the covenants and treaties on fundamental human rights to which Romania is a party.

At the same time, the Criminal Code of 2009 correctly implements several regulations adopted at the European Union level and properly harmonizes the Romanian material criminal law with the systems of other Member States.

Moreover, Law no. 187/2012 harmonized all criminal provisions provided for in regulations other than the new Criminal Code, insofar as they have not been repealed.

All these developments, among other endeavors our country has carried out, especially of institutional and budgetary nature, entitle us to assert that, after the entry into force of the new criminal legislation, Romania will have one of the most modern systems of criminal law in the European Union.